16A C.J.S. Constitutional Law IV X A Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

A. Introduction

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1290 to 1308, 1333, 4033, 4447

A.L.R. Library

A.L.R. Index, Civil Rights and Discrimination
A.L.R. Index, Constitutional Law
A.L.R. Index, Freedom of Religion
A.L.R. Index, Separation of Church and State
West's A.L.R. Digest, Constitutional Law 1290 to 1308, 1333, 4033, 4447

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16A C.J.S. Constitutional Law § 855

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Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

A. Introduction

1. In General

§ 855. Religious liberty and freedom of conscience, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1290, 1295, 1303

There is a constitutionally guaranteed right to select any religious faith or none at all, without governmental interference.

The right to worship according to the dictates of one's own conscience and reason, and to be free from molestation or restraint in such worship, is a natural, fundamental, and inalienable right, available to every individual provided he or she does not disturb others.[1] The right is not the subject of a direct constitutional grant;[2] however, the religion clauses of the First Amendment to the Federal Constitution proscribe the making of any law respecting the establishment of religion or prohibiting the free exercise thereof by the Congress.[3] Thus, there is a constitutionally guaranteed right to select any religious faith or none at all,[4] without interference from the state.[5] The preservation and transmission of religious beliefs and worship is thus a responsibility and a choice committed to the private sphere,[6] and freedom of worship is constitutionally recognized and confirmed as an attribute of liberty incident to all persons under the Constitution and laws of the United States[7] regardless of their citizenship.[8]

The purposes of the First Amendment guaranties of religion are to foreclose interference with the practice of religious faith,[9] to delineate boundaries to avoid excessive entanglement between government and religion,[10] and to foreclose the establishment of

a state religion.[11] The First Amendment was adopted to curtail the power of Congress to interfere with an individual's freedom to believe, to worship, and to express himself or herself in accordance with the dictates of his or her own conscience.[12] The Constitution safeguards the free exercise of an individual's chosen form of religion[13] and forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship.[14] Furthermore, the holding of any religious belief or opinion may not be forbidden,[15] and the government may not force a person to say or believe anything in conflict with his or her religious tenets.[16]

Political division along religious lines is another principal evil against which the religion clauses of the First Amendment were intended to protect.[17] An objective of the First Amendment is to require the government to maintain a neutral role with respect to religion, not only to protect the religious freedom of the minority but also to preserve religion from destructive influences which result when government and religion combine.[18]

Under the constitutional guaranty, freedom of religion is in a preferred position[19] as compared, for instance, to the constitutional rights of property owners.[20]

The First Amendment is not subject to majority rule.[21] The freedom of worship is a right which may not be submitted to a vote and does not depend on the outcome of any election.[22] Furthermore, the application and content of the religion clauses of the First Amendment are not determined by public opinion polls or by majority vote.[23]

CUMULATIVE SUPPLEMENT

Cases:

The Religion Clauses of the Constitution aim to foster a society in which people of all beliefs can live together harmoniously. U.S. Const. Amend. 1. American Legion v. American Humanist Association, 139 S. Ct. 2067 (2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Chaplinsky v. State of New Hampshire, 315 U.S. 568, 62 S. Ct. 766, 86 L. Ed. 1031 (1942).
N.Y.—Brown v. City School Dist. of City of Corning, 104 Misc. 2d 796, 429 N.Y.S.2d 355 (Sup 1980), judgment aff'd, 83 A.D.2d 755, 444 N.Y.S.2d 878 (4th Dep't 1981).

2 U.S.—Douglas v. City of Jeannette, Pa., 130 F.2d 652 (C.C.A. 3d Cir. 1942), judgment aff'd, 319 U.S. 157, 63 S. Ct. 877, 87 L. Ed. 1324 (1943).

3 U.S. Const. Amend. I.
Application to judiciary
N.J.—In re Adoption of E, 59 N.J. 36, 279 A.2d 785, 48 A.L.R.3d 366 (1971).

4 U.S.—Wallace v. Jaffree, 472 U.S. 38, 105 S. Ct. 2479, 86 L. Ed. 2d 29, 25 Ed. Law Rep. 39 (1985).
"Freedom from religion"
Md.—Montgomery County Dept. of Social Services v. Sanders, 38 Md. App. 406, 381 A.2d 1154 (1977).

5 La.—United Pentecostal Church Intern., Inc. v. Sanderson, 391 So. 2d 1293 (La. Ct. App. 2d Cir. 1980), writ denied, 395 So. 2d 682 (La. 1981).
Pa.—Morris v. Morris, 271 Pa. Super. 19, 412 A.2d 139 (1979).

6 U.S.—Santa Fe Independent School Dist. v. Doe, 530 U.S. 290, 120 S. Ct. 2266, 147 L. Ed. 2d 295, 145 Ed. Law Rep. 21 (2000).

7 U.S.—Douglas v. City of Jeannette, Pa., 130 F.2d 652 (C.C.A. 3d Cir. 1942), judgment aff'd, 319 U.S. 157, 63 S. Ct. 877, 87 L. Ed. 1324 (1943).

Rights of minors

U.S.—Johnson v. City of Opelousas, 658 F.2d 1065, 32 Fed. R. Serv. 2d 879 (5th Cir. 1981).

8 U.S.—Douglas v. City of Jeannette, Pa., 130 F.2d 652 (C.C.A. 3d Cir. 1942), judgment aff'd, 319 U.S. 157, 63 S. Ct. 877, 87 L. Ed. 1324 (1943).

9 U.S.—Larkin v. Grendel's Den, Inc., 459 U.S. 116, 103 S. Ct. 505, 74 L. Ed. 2d 297 (1982).

10 U.S.—Walz v. Tax Commission of City of New York, 397 U.S. 664, 90 S. Ct. 1409, 25 L. Ed. 2d 697 (1970).

For a general discussion of excessive entanglement, see § 864.

11 U.S.—Larkin v. Grendel's Den, Inc., 459 U.S. 116, 103 S. Ct. 505, 74 L. Ed. 2d 297 (1982).

For a general discussion of the Establishment Clause, see §§ 860 to 864.

12 U.S.—Wallace v. Jaffree, 472 U.S. 38, 105 S. Ct. 2479, 86 L. Ed. 2d 29, 25 Ed. Law Rep. 39 (1985).

13 U.S.—U.S. v. Ballard, 322 U.S. 78, 64 S. Ct. 882, 88 L. Ed. 1148 (1944).

Ill.—Wright v. Smith, 4 Ill. App. 2d 470, 124 N.E.2d 363 (4th Dist. 1955).

Md.—Hopkins v. State, 193 Md. 489, 69 A.2d 456 (1949).

For a general discussion of the Free Exercise Clause, see §§ 865 to 870.

14 U.S.—Sherbert v. Verner, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963); Africa v. Anderson, 542 F. Supp. 224 (E.D. Pa. 1982).

N.C.—Heritage Village Church and Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979), judgment aff'd, 299 N.C. 399, 263 S.E.2d 726 (1980).

15 U.S.—Africa v. Anderson, 542 F. Supp. 224 (E.D. Pa. 1982).

16 U.S.—Africa v. Anderson, 542 F. Supp. 224 (E.D. Pa. 1982).

17 U.S.—Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971).

18 § 857.

19 U.S.—Follett v. Town of McCormick, S.C., 321 U.S. 573, 64 S. Ct. 717, 88 L. Ed. 938, 152 A.L.R. 317 (1944); Sharp v. Sigler, 408 F.2d 966 (8th Cir. 1969).

N.Y.—Cowen v. Lily Dale Assembly, 44 A.D.2d 772, 354 N.Y.S.2d 269 (4th Dep't 1974).

R.I.—In re Palmer, 120 R.I. 250, 386 A.2d 1112 (1978).

20 U.S.—Marsh v. State of Ala., 326 U.S. 501, 66 S. Ct. 276, 90 L. Ed. 265 (1946).

N.Y.—People v. Barisi, 193 Misc. 934, 86 N.Y.S.2d 277 (Magis. Ct. 1948).

21 U.S.—Town of Greece, N.Y. v. Galloway, 134 S. Ct. 1811, 188 L. Ed. 2d 835 (2014).

22 U.S.—West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628, 147 A.L.R. 674 (1943).

Neb.—Hanson v. Union Pac. R. Co., 160 Neb. 669, 71 N.W.2d 526 (1955), judgment rev'd on other grounds, 351 U.S. 225, 76 S. Ct. 714, 100 L. Ed. 1112 (1956).

23 U.S.—McLean v. Arkansas Bd. of Ed., 529 F. Supp. 1255, 2 Ed. Law Rep. 685 (E.D. Ark. 1982).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

A. Introduction

1. In General

§ 856. Protection against federal, state, and local action

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1290, 1295, 1303, 4033, 4447

The First Amendment effectually guarantee the religious liberty of the individual against infringement by the federal government and its agencies, and the Due Process Clause of the Fourteenth Amendment extends this guarantee to protect individual religious liberty against state action. In addition, state constitutions contain varying provisions with respect to religious liberty and freedom of conscience.

The provisions of the First Amendment effectually guarantee the religious liberty of the individual against infringement by the federal government,[1] or agencies of the federal government,[2] and generally enjoin the employment of the organs of government for essentially religious purposes.[3] However, while literally they constitute no protection against action by the states,[4] the Due Process Clause of the Fourteenth Amendment to the Federal Constitution safeguards religious liberty from interference by a state[5] and subdivisions thereof.[6]

State constitutions contain varying provisions with respect to religious liberty and freedom of conscience.[7] Statutes, ordinances, and regulations which transcend these guaranties are null and void[8] but will be upheld if they conform to such provisions.[9] The letter and spirit of state constitutional provisions relating to religious affairs, as variously worded, are substantially of the same

purpose, intent, and effect as the religious guaranties of the First Amendment.[10] The protection of rights and freedoms secured by a particular religion provision of a state constitution does not transcend the protection of the First Amendment.[11]

Footnotes

1 U.S.—Chaplinsky v. State of New Hampshire, 315 U.S. 568, 62 S. Ct. 766, 86 L. Ed. 1031 (1942).
Md.—Hopkins v. State, 193 Md. 489, 69 A.2d 456 (1949).
N.J.—Tudor v. Board of Ed. of Borough of Rutherford, 14 N.J. 31, 100 A.2d 857, 45 A.L.R.2d 729 (1953).

2 U.S.—Massachusetts Universalist Convention v. Hildreth & Rogers Co., 183 F.2d 497 (1st Cir. 1950).

3 U.S.—Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969); Hickman v. Owens, 322 F. Supp. 1278 (N.D. Ga. 1971).

4 Cal.—Gabrielli v. Knickerbocker, 12 Cal. 2d 85, 82 P.2d 391 (1938).
Ga.—Swafford v. Keaton, 23 Ga. App. 238, 98 S.E. 122 (1919).

5 U.S.—Stone v. Graham, 449 U.S. 39, 101 S. Ct. 192, 66 L. Ed. 2d 199 (1980).
Cal.—Perez v. Lippold, 32 Cal. 2d 711, 198 P.2d 17 (1948).
Iowa—Rudd v. Ray, 248 N.W.2d 125 (Iowa 1976).
Variance with state constitution
N.H.—Opinion of the Justices, 108 N.H. 97, 228 A.2d 161 (1967).

6 U.S.—Williams v. Board of Ed. of Kanawha County, 388 F. Supp. 93 (S.D. W. Va. 1975), aff'd, 530 F.2d 972 (4th Cir. 1975).
Local school boards
U.S.—Wiley v. Franklin, 468 F. Supp. 133 (E.D. Tenn. 1979).

7 Colo.—People ex rel. Vollmar v. Stanley, 81 Colo. 276, 255 P. 610 (1927) (overruled on other grounds by, Conrad v. City and County of Denver, 656 P.2d 662 (Colo. 1982)).
Mass.—Rasheed v. Commissioner of Correction, 446 Mass. 463, 845 N.E.2d 296 (2006).
Mont.—State v. Big Sheep, 75 Mont. 219, 243 P. 1067 (1926).

8 U.S.—Jones v. City of Opelika, 319 U.S. 103, 63 S. Ct. 890, 87 L. Ed. 1290 (1943); Watchtower Bible & Tract Soc. v. Los Angeles County, 181 F.2d 739 (9th Cir. 1950).
S.D.—State v. Van Daalan, 69 S.D. 466, 11 N.W.2d 523 (1943).

9 Tenn.—Joyner v. Priest, 173 Tenn. 320, 117 S.W.2d 9 (1938).

10 N.J.—Schaad v. Ocean Grove Camp Meeting Ass'n of United Methodist Church, 72 N.J. 237, 370 A.2d 449 (1977) (overruled on other grounds by, State v. Celmer, 80 N.J. 405, 404 A.2d 1 (1979)).

11 Pa.—Wiest v. Mt. Lebanon School Dist., 457 Pa. 166, 320 A.2d 362 (1974).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

A. Introduction

1. In General

§ 857. Separation of church and state; neutrality

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1291, 1295, 1333

While it has been stated that pursuant to the philosophy of the First Amendment church and state should be separate, there is a limit to this doctrine, and rather than striving for an absolute separation, the State should assume a position of neutrality.

The provisions of the First Amendment, and similar constitutional provisions, reflect the philosophy that church and state should be separated,[1] subject to a "wall of separation,"[2] and as far as interference with the free exercise of religion and an establishment of religion are concerned, the view has been expressed that the separation must be complete and unequivocal.[3] However, total separation between church and state is not possible in an absolute sense;[4] some relationship between government and religious organizations is inevitable.[5] Thus, it is more appropriately said that the religion clauses compel the federal government or a state to pursue a course of neutrality toward religion,[6] meaning that government may not prefer one religion over another,[7] or religion over nonreligion.[8] Such neutrality requires that neither the purpose nor the primary effect of a governmental measure be either the advancement or inhibition of religion.[9] State power is not used to either favor or handicap religion,[10] and the government should not involve itself in either prescribing or proscribing religious activity.[11]

It is important to note that the requirements of the First Amendment do not require hostility to religion[12] or to the advocacy of no religion,[13] or callous indifference to religious activities or groups.[14] While the federal government or state must be neutral in its relations with groups of religious believers and nonbelievers, it is not required to be their adversary.[15]

While the courts will not tolerate either governmentally established religion or governmental interference with religion, there is room for play between the boundaries of the Establishment Clause and the Free Exercise Clause of the First Amendment productive of benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.[16] Each value judgment under the clauses must therefore turn on whether particular acts in question are intended to establish, or interfere with, religious beliefs and practices or have the effect of doing so.[17]

CUMULATIVE SUPPLEMENT

Cases:

The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another. U.S.C.A. Const.Amend. 1. Trump v. Hawaii, 138 S. Ct. 2392 (2018).

Court would apply presumption of constitutionality to phrase so help me God in oath of allegiance administered at naturalization ceremonies, for purpose of atheist alien's Establishment Clause challenge to oath; although phrase was religiously expressive, there was an established history of invocations of God in public oaths and statements tracing back to the founding era, original reason for including the phrase in the oath was unknown, purpose of including and maintaining the phrase as an option in the oath for nearly a century and the message conveyed by it likely evolved over time, Citizenship and Immigration Services permitted alteration of the oath to remove the phrase, and removal of the phrase may have struck many as aggressively hostile to religion. U.S. Const. Amend. 1. Perrier-Bilbo v. United States, 954 F.3d 413 (1st Cir. 2020).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Zorach v. Clauson, 343 U.S. 306, 72 S. Ct. 679, 96 L. Ed. 954 (1952); Everson v. Board of Ed. of Ewing Tp., 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711, 168 A.L.R. 1392 (1947).
N.Y.—People on Complaint of Shapiro v. Dorin, 199 Misc. 643, 99 N.Y.S.2d 830 (Dom. Rel. Ct. 1950), judgment aff'd, 278 A.D. 705, 103 N.Y.S.2d 757 (2d Dep't 1951), judgment aff'd, 302 N.Y. 857, 100 N.E.2d 48 (1951).

2 U.S.—People of State of Ill. ex rel. McCollum v. Board of Ed. of School Dist. No. 71, Champaign County, Ill., 333 U.S. 203, 68 S. Ct. 461, 92 L. Ed. 649, 2 A.L.R.2d 1338 (1948).
Me.—Bagley v. Raymond School Dept., 1999 ME 60, 728 A.2d 127, 134 Ed. Law Rep. 226 (Me. 1999).
Minn.—Hill-Murray Federation of Teachers, St. Paul, Minn. v. Hill-Murray High School, Maplewood, Minn., 487 N.W.2d 857, 76 Ed. Law Rep. 864 (Minn. 1992).
Mo.—Trinity Lutheran Church of Columbia, Inc. v. Pauley, 976 F. Supp. 2d 1137 (W.D. Mo. 2013).

3 U.S.—Zorach v. Clauson, 343 U.S. 306, 72 S. Ct. 679, 96 L. Ed. 954 (1952).

4 U.S.—Board of Educ. of Kiryas Joel Village School Dist. v. Grumet, 512 U.S. 687, 114 S. Ct. 2481, 129 L. Ed. 2d 546, 91 Ed. Law Rep. 810 (1994); Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971); Rogers v. Mulholland, 858 F. Supp. 2d 213, 284 Ed. Law Rep. 233 (D.R.I. 2012); Kucera v. Jefferson County Bd. of School Com'rs, 956 F. Supp. 2d 842, 300 Ed. Law Rep. 863 (E.D. Tenn. 2013).

Kan.—In re Westboro Baptist Church, 40 Kan. App. 2d 27, 189 P.3d 535 (2008).

5 U.S.—Lynch v. Donnelly, 465 U.S. 668, 104 S. Ct. 1355, 79 L. Ed. 2d 604 (1984); Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971); Kucera v. Jefferson County Bd. of School Com'rs, 956 F. Supp. 2d 842, 300 Ed. Law Rep. 863 (E.D. Tenn. 2013).

6 U.S.—Good News Club v. Milford Central School, 533 U.S. 98, 121 S. Ct. 2093, 150 L. Ed. 2d 151, 154 Ed. Law Rep. 45 (2001); Andon, LLC v. City of Newport News, Va., 2014 WL 6609359 (E.D. Va. 2014).

Mont.—Valley Christian School v. Montana High School Ass'n, 2004 MT 41, 320 Mont. 81, 86 P.3d 554, 186 Ed. Law Rep. 543 (2004).

7 U.S.—Board of Educ. of Kiryas Joel Village School Dist. v. Grumet, 512 U.S. 687, 114 S. Ct. 2481, 129 L. Ed. 2d 546, 91 Ed. Law Rep. 810 (1994); Michigan Catholic Conference and Catholic Family Services v. Burwell, 755 F.3d 372 (6th Cir. 2014); Hartmann v. California Dept. of Corrections and Rehabilitation, 707 F.3d 1114 (9th Cir. 2013).

Tex.—HEB Ministries, Inc. v. Texas Higher Educ. Coordinating Bd., 235 S.W.3d 627, 226 Ed. Law Rep. 348 (Tex. 2007).

8 U.S.—Board of Educ. of Kiryas Joel Village School Dist. v. Grumet, 512 U.S. 687, 114 S. Ct. 2481, 129 L. Ed. 2d 546, 91 Ed. Law Rep. 810 (1994); Kaufman v. Pugh, 733 F.3d 692 (7th Cir. 2013).

Colo.—Freedom from Religion Foundation, Inc. v. Hickenlooper, 2012 COA 81, 2012 WL 1638718 (Colo. App. 2012), cert. granted, 2013 WL 2221500 (Colo. 2013).

9 U.S.—School Dist. of Abington Tp., Pa. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963); Martinez v. Clark County, Nev., 846 F. Supp. 2d 1131 (D. Nev. 2012).

Colo.—Americans United for Separation of Church and State Fund, Inc. v. State, 648 P.2d 1072, 5 Ed. Law Rep. 1017 (Colo. 1982).

For a discussion of this requirement as an element of the three-part test for determining the validity of governmental action under the Establishment Clause, see § 863.

10 U.S.—Everson v. Board of Ed. of Ewing Tp., 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711, 168 A.L.R. 1392 (1947); Dewey v. Reynolds Metals Co., 429 F.2d 324 (6th Cir. 1970), judgment aff'd, 402 U.S. 689, 91 S. Ct. 2186, 29 L. Ed. 2d 267 (1971).

N.D.—State v. Gamble Skogmo, Inc., 144 N.W.2d 749 (N.D. 1966).

11 U.S.—Jaffree By and Through Jaffree v. James, 544 F. Supp. 727, 5 Ed. Law Rep. 1153 (S.D. Ala. 1982).

12 U.S.—Zorach v. Clauson, 343 U.S. 306, 72 S. Ct. 679, 96 L. Ed. 954 (1952); Brandon v. Board of Ed. of Guilderland Central School Dist., 487 F. Supp. 1219 (N.D. N.Y. 1980), judgment aff'd, 635 F.2d 971 (2d Cir. 1980).

Governmental hostility to religion forbidden

U.S.—Lynch v. Donnelly, 465 U.S. 668, 104 S. Ct. 1355, 79 L. Ed. 2d 604 (1984).

13 U.S.—Epperson v. State of Ark., 393 U.S. 97, 89 S. Ct. 266, 21 L. Ed. 2d 228 (1968).

14 U.S.—Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos, 483 U.S. 327, 107 S. Ct. 2862, 97 L. Ed. 2d 273 (1987).

Mich.—Snyder v. Charlotte Public School Dist., Eaton County, 421 Mich. 517, 365 N.W.2d 151, 24 Ed. Law Rep. 466, 43 A.L.R.4th 745 (1984).

15 U.S.—Everson v. Board of Ed. of Ewing Tp., 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711, 168 A.L.R. 1392 (1947).

N.J.—Tudor v. Board of Ed. of Borough of Rutherford, 14 N.J. 31, 100 A.2d 857, 45 A.L.R.2d 729 (1953).

N.D.—State v. Gamble Skogmo, Inc., 144 N.W.2d 749 (N.D. 1966).

16 U.S.—Walz v. Tax Commission of City of New York, 397 U.S. 664, 90 S. Ct. 1409, 25 L. Ed. 2d 697 (1970); Gray v. Johnson, 436 F. Supp. 2d 795 (W.D. Va. 2006).

Kan.—In re Westboro Baptist Church, 40 Kan. App. 2d 27, 189 P.3d 535 (2008).

Mo.—Gibson v. Brewer, 952 S.W.2d 239 (Mo. 1997).

For a general discussion of the interplay of the religion clauses, see § 859.

17 U.S.—Walz v. Tax Commission of City of New York, 397 U.S. 664, 90 S. Ct. 1409, 25 L. Ed. 2d 697 (1970).

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Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

A. Introduction

1. In General

§ 858. Private rights uncurtailed

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1290

The guaranties of religious freedom contained in the First Amendment are limitations on the powers of the government, not on the rights of private persons.

The guaranties of religious freedom contained in the First Amendment are limitations on the powers of the government and not on the rights of private persons.[1] They proscribe governmental action,[2] not private action.[3] Thus, in the absence of governmental involvement, they do not bind the actions of private corporations[4] or organizations[5] and have no bearing on individual actions or transactions.[6]

Freedom of religion does not mean freedom to interfere with the peaceful rights of others;[7] in the course of the promulgation of his or her own religious views, a person cannot exercise unlawful force in an effort to destroy the religious views of another.[8] Furthermore, a group may not use the organs of government to foist its religious beliefs on others.[9]

Footnotes

1 Del.—Delaware Trust Co. v. Fitzmaurice, 27 Del. Ch. 101, 31 A.2d 383 (1943), decree modified on other grounds, 27 Del. Ch. 374, 38 A.2d 463 (1944).

2 U.S.—American Civil Liberties Union of Georgia v. Rabun County Chamber of Commerce, Inc., 510 F. Supp. 886 (N.D. Ga. 1981), aff'd and remanded on other grounds, 678 F.2d 1379 (11th Cir. 1982), reh'g denied and opinion modified on other grounds, 698 F.2d 1098 (11th Cir. 1983).

N.Y.—Zlotowitz v. Jewish Hospital, 193 Misc. 124, 84 N.Y.S.2d 61 (Sup 1948), order aff'd, 277 A.D. 974, 100 N.Y.S.2d 226 (1st Dep't 1950).

Governmental speech

U.S.—Child Evangelism Fellowship of Minnesota v. Minneapolis Special School Dist. No. 1, 690 F.3d 996, 283 Ed. Law Rep. 695 (8th Cir. 2012).

3 **Involvement of church in abortion controversy**

U.S.—Abortion Rights Mobilization, Inc. v. Regan, 544 F. Supp. 471 (S.D. N.Y. 1982).

Private employers or individuals not affected

N.Y.—Cenzon-DeCarlo v. Mount Sinai Hosp., 39 Misc. 3d 703, 962 N.Y.S.2d 845 (Sup 2010), order aff'd, 101 A.D.3d 924, 957 N.Y.S.2d 256 (2d Dep't 2012), leave to appeal denied, 21 N.Y.3d 858, 970 N.Y.S.2d 748, 992 N.E.2d 1093 (2013).

4 U.S.—Massachusetts Universalist Convention v. Hildreth & Rogers Co., 183 F.2d 497 (1st Cir. 1950).

Incorporated hospital

N.Y.—Zlotowitz v. Jewish Hospital, 193 Misc. 124, 84 N.Y.S.2d 61 (Sup 1948), order aff'd, 277 A.D. 974, 100 N.Y.S.2d 226 (1st Dep't 1950).

5 Ala.—Chapman v. American Legion, 244 Ala. 553, 14 So. 2d 225, 147 A.L.R. 585 (1943).

Necessity of governmental involvement

U.S.—Granfield v. Catholic University of America, 530 F.2d 1035 (D.C. Cir. 1976).

6 Or.—U. S. Nat. Bank of Portland v. Snodgrass, 202 Or. 530, 275 P.2d 860, 50 A.L.R.2d 725 (1954).

7 U.S.—Childs v. Duckworth, 509 F. Supp. 1254 (N.D. Ind. 1981), judgment aff'd, 705 F.2d 915 (7th Cir. 1983).

Disturbance of others' worship

Ind.—Lynch v. Indiana State University Bd. of Trustees, 177 Ind. App. 172, 378 N.E.2d 900 (1978).

8 Ala.—Hill v. State, 381 So. 2d 206 (Ala. Crim. App. 1979), writ denied, 381 So. 2d 213 (Ala. 1980).

9 U.S.—McLean v. Arkansas Bd. of Ed., 529 F. Supp. 1255, 2 Ed. Law Rep. 685 (E.D. Ark. 1982).

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16A C.J.S. Constitutional Law § 859

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

A. Introduction

1. In General

§ 859. Interplay of religion clauses

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1295, 1303

The right to freedom of religion is a fundamental right, and the religious clauses of the First Amendment, applicable to the federal government, and through the Fourteenth Amendment, applicable to the states, proscribe governmental support or hindrance of religion.

Although the Establishment and the Free Exercise Clauses of the First Amendment may in certain instances overlap, they forbid two quite different types of encroachment upon religious freedom.[1] While it is necessary in a case under the Free Exercise Clause for one to show the coercive effect of an enactment as it operates against him or her in the practice of religion, an Establishment Clause violation need not be so attended.[2] Thus, the Establishment Clause has a broader application than does the Free Exercise Clause in the sense that a plaintiff may bring suit under the Establishment Clause even though he or she has suffered no injury to or impairment of his or her religious beliefs while a plaintiff cannot bring suit under the Free Exercise Clause unless he or she or she can allege a direct governmental infringement on his or her religious beliefs or practices.[3]

Cast as they are in absolute terms, the religion clauses tend to clash with each other if expanded to logical extremes.[4] The principle that government may accommodate the free exercise of religion does not supersede the fundamental limitations

imposed by the Establishment Clause.[5] At the same time, the fact that legislation comports with the Establishment Clause of the First Amendment does not automatically settle the issue of any conflict with the Free Exercise Clause,[6] and it has been suggested that in confrontations between Establishment Clause and Free Exercise Clause values, the latter are to be viewed as dominant.[7] However, an accommodation between the clauses, when in conflict, is constitutionally permissible.[8] There is room for play in the joints between the Free Exercise and Establishment Clauses, and there is some space for legislative action which is neither compelled by the Free Exercise Clause nor prohibited by the Establishment Clause.[9] Thus, laws which might otherwise be deemed violative of the Establishment Clause may be upheld where they appear reasonably necessary to satisfy free exercise rights[10] and do not pose any serious danger to the public.[11]

CUMULATIVE SUPPLEMENT

Cases:

There is "play in the joints" between what the Establishment Clause permits and the Free Exercise Clause compels. U.S.C.A. Const.Amend. 1. Trinity Lutheran Church of Columbia, Inc. v. Comer, 2017 WL 2722410 (U.S. 2017).

There is "play in the joints" between what the Establishment Clause permits and the Free Exercise Clause compels. U.S.C.A. Const.Amend. 1. Trinity Lutheran Church of Columbia, Inc. v. Comer, 137 S. Ct. 2012 (2017).

County's zoning ordinance governing adult entertainment overlay districts constituted prior restraint on expressive conduct of nude dancing, where ordinance required applicants to apply to county for permission to undertake their selected mode of expression, county's committee would then decide whether applicants received permission to make their proposed communication based on content of that communication, which required committee to review such amorphous points as whether proposed use was detriment to public welfare, or would in no way contribute to deterioration of surrounding neighborhood, or would not have harmful influence on children in the area, and county was required to affirmatively grant permission for use to occur. U.S.C.A. Const.Amend. 1. Green Valley Investments v. Winnebago County, Wis., 794 F.3d 864 (7th Cir. 2015).

Nude dancing in bars is expressive conduct, and is protected under state constitution. M.S.A. Const. Art. 1, § 3. State v. Washington-Davis, 867 N.W.2d 222 (Minn. Ct. App. 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Engel v. Vitale, 370 U.S. 421, 82 S. Ct. 1261, 8 L. Ed. 2d 601, 86 A.L.R.2d 1285 (1962); Johnson v. Board of County Com'rs of Bernalillo County, 528 F. Supp. 919 (D.N.M. 1981), decision rev'd on other grounds, 781 F.2d 777 (10th Cir. 1985).

2 U.S.—School Dist. of Abington Tp., Pa. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963).
N.H.—Opinion of the Justices, 108 N.H. 97, 228 A.2d 161 (1967).

3 U.S.—Malnak v. Yogi, 440 F. Supp. 1284 (D.N.J. 1977), judgment aff'd, 592 F.2d 197 (3d Cir. 1979).

4 U.S.—Walz v. Tax Commission of City of New York, 397 U.S. 664, 90 S. Ct. 1409, 25 L. Ed. 2d 697 (1970).

5 U.S.—Lee v. Weisman, 505 U.S. 577, 112 S. Ct. 2649, 120 L. Ed. 2d 467, 75 Ed. Law Rep. 43 (1992).

6 U.S.—Gillette v. U.S., 401 U.S. 437, 91 S. Ct. 828, 28 L. Ed. 2d 168 (1971); Walz v. Tax Commission of City of New York, 397 U.S. 664, 90 S. Ct. 1409, 25 L. Ed. 2d 697 (1970).

7 N.J.—Resnick v. East Brunswick Tp. Bd. of Ed., 77 N.J. 88, 389 A.2d 944 (1978).

8 U.S.—Wilder v. Sugarman, 385 F. Supp. 1013 (S.D. N.Y. 1974).

N.J.—Student Members of Playcrafters v. Board of Ed. of Teaneck Tp., 177 N.J. Super. 66, 424 A.2d 1192 (App. Div. 1981), judgment aff'd, 88 N.J. 74, 438 A.2d 543 (1981).

9 U.S.—Cutter v. Wilkinson, 544 U.S. 709, 125 S. Ct. 2113, 161 L. Ed. 2d 1020 (2005).

10 U.S.—County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter, 492 U.S. 573, 109 S. Ct. 3086, 106 L. Ed. 2d 472 (1989) (abrogated on other grounds by, Town of Greece, N.Y. v. Galloway, 134 S. Ct. 1811, 188 L. Ed. 2d 835 (2014)); Wilder v. Sugarman, 385 F. Supp. 1013 (S.D. N.Y. 1974).

11 U.S.—Wilder v. Sugarman, 385 F. Supp. 1013 (S.D. N.Y. 1974).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

A. Introduction

2. Establishment of Religion

§ 860. Establishment of religion, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1290 to 1308, 1333

The First Amendment, which the Fourteenth Amendment makes binding on the states through its due process clause, prohibits any law "respecting an establishment of religion," which means that neither a state nor the federal government can set up a church, pass laws which aid one religion, aid all religions, or prefer one religion over another.

The First Amendment, in one of its clauses, prohibits any law "respecting an establishment of religion."[1] This provision speaks only to acts of Congress,[2] but the Establishment Clause is, through the Due Process Clause of the Fourteenth Amendment, made applicable to the states[3] and subdivisions thereof,[4] and its protections cannot be waived by individuals or institutions.[5]

The Establishment Clause guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in way which establishes a state religion or religious faith or tends to do so.[6] More specifically, the clause ensures that neither a state nor the federal government can set up a church;[7] involve itself too deeply in a religious institution's affairs;[8] pass laws which aid one religion, aid all religions, or prefer one religion over another;[9] prefer religion to irreligion;[10] force or influence a person to go to, or to remain away from, church against his or her will;[11] force him or her to profess a

belief or disbelief in any religion;[12] or make adherence to religion relevant in any way to a person's standing in the political community.[13] Other general matters forbidden by the clause are supporting religious activities or institutions by tax revenues,[14] ceding or delegating governmental power to a religious organization,[15] permitting secular and religious authorities to interfere in each other's autonomous spheres,[16] and subsidizing the dissemination of religious doctrine.[17] Furthermore, a government official has no authority to require a religious act.[18]

The primary evils against which the Establishment Clause was intended to afford protection are the sponsorship, financial support and active involvement of the government in religious activity,[19] as well as political division along religious lines.[20] The clause was intended to prevent persecution of religious minorities by civil authorities,[21] having as its central purpose the insuring of governmental neutrality in matters of religion.[22]

The Establishment Clause was designed not only to protect the free exercise of religion but also to guard against tendencies to political tyranny and subversion of civil authority.[23] The clause withdrew all legislative power respecting religious belief or the expression thereof[24] and is not restricted to forbidding governmental preference of one religion over another.[25] A law may be one respecting the establishment of religion even though its consequence is not to promote a state religion[26] and even though it does not aid one religion more than another but merely benefits all religions alike.[27]

The absence of any element of coercion is irrelevant to questions arising under the Establishment Clause,[28] and a plaintiff may bring suit under the Establishment Clause even though he or she has suffered no injury to or impairment of his or her religious beliefs.[29]

State constitutions.

State constitutional provisions concerning the establishment of religion are not more restrictive than the similar clause of the Federal Constitution.[30] The federal standard utilized in determining whether a statute violates the Establishment Clause has been followed by state courts in regard to that issue involving a state establishment clause provision.[31]

Under various state constitutional provisions, public money may not be appropriated for religious worship or sectarian purposes.[32] State constitutional provisions that no person be compelled to support any place of worship or any denomination of religion and that no money be taken from the public treasury in aid of any church or denomination of religion may be more restrictive than the First Amendment in prohibiting expenditures of public funds in a manner tending to erode an absolute separation of church and state.[33]

CUMULATIVE SUPPLEMENT

Cases:

Determining whether a government practice challenged under the First Amendment Establishment Clause has the primary effect of advancing religion, or the purpose or effect of endorsing religion, within meaning of *Lemon v. Kurtzman* test, requires asking whether a reasonable observer acquainted with the text, history, and implementation of the challenged procedures would view them as a government endorsement of religion. U.S. Const. Amend. 1. Harkness v. Secretary of Navy, 858 F.3d 437 (6th Cir. 2017).

For law to have effects forbidden by Establishment Clause under *Lemon v. Kurtzman*, it must be fair to say that government itself has advanced religion through its own activities and influence. U.S. Const. Amend. 1. Gaylor v. Mnuchin, 919 F.3d 420 (7th Cir. 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S. Const. Amend. I.

2 U.S.—American Civil Liberties Union of Georgia v. Rabun County Chamber of Commerce, Inc., 510 F. Supp. 886 (N.D. Ga. 1981), aff'd and remanded on other grounds, 678 F.2d 1379 (11th Cir. 1982), reh'g denied and opinion modified on other grounds, 698 F.2d 1098 (11th Cir. 1983).

3 U.S.—California v. Grace Brethren Church, 457 U.S. 393, 102 S. Ct. 2498, 73 L. Ed. 2d 93 (1982); Community House, Inc. v. City of Boise, Idaho, 623 F.3d 945 (9th Cir. 2010).
Mich.—Chabad-Lubavitch of Michigan v. Schuchman, 305 Mich. App. 337, 853 N.W.2d 390 (2014).
N.Y.—Ming Tung v. China Buddhist Ass'n, 124 A.D.3d 13, 996 N.Y.S.2d 236 (1st Dep't 2014), appeal dismissed, 2015 WL 1423450 (N.Y. 2015).
Wash.—Erdman v. Chapel Hill Presbyterian Church, 175 Wash. 2d 659, 286 P.3d 357 (2012).

4 U.S.—Kleid v. Board of Ed. of Fulton, Kentucky Independent School Dist., 406 F. Supp. 902 (W.D. Ky. 1976); Levers v. City of Tullahoma, Tenn., 446 F. Supp. 884 (E.D. Tenn. 1978).
N.H.—Opinion of the Justices, 108 N.H. 268, 233 A.2d 832 (1967).

5 U.S.—Johnson v. Sanders, 319 F. Supp. 421 (D. Conn. 1970), judgment aff'd, 403 U.S. 955, 91 S. Ct. 2292, 29 L. Ed. 2d 865 (1971) and judgment aff'd, 403 U.S. 955, 91 S. Ct. 2293, 29 L. Ed. 2d 865 (1971).

6 U.S.—Lee v. Weisman, 505 U.S. 577, 112 S. Ct. 2649, 120 L. Ed. 2d 467, 75 Ed. Law Rep. 43 (1992).

7 U.S.—People of State of Ill. ex rel. McCollum v. Board of Ed. of School Dist. No. 71, Champaign County, Ill., 333 U.S. 203, 68 S. Ct. 461, 92 L. Ed. 649, 2 A.L.R.2d 1338 (1948).
Ariz.—Kotterman v. Killian, 193 Ariz. 273, 972 P.2d 606, 132 Ed. Law Rep. 938 (1999).
N.J.—Tudor v. Board of Ed. of Borough of Rutherford, 14 N.J. 31, 100 A.2d 857, 45 A.L.R.2d 729 (1953).
Tex.—HEB Ministries, Inc. v. Texas Higher Educ. Coordinating Bd., 235 S.W.3d 627, 226 Ed. Law Rep. 348 (Tex. 2007).

8 U.S.—County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter, 492 U.S. 573, 109 S. Ct. 3086, 106 L. Ed. 2d 472 (1989) (abrogated on other grounds by, Town of Greece, N.Y. v. Galloway, 134 S. Ct. 1811, 188 L. Ed. 2d 835 (2014)).

9 U.S.—Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).
Cal.—California Educational Facilities Authority v. Priest, 12 Cal. 3d 593, 116 Cal. Rptr. 361, 526 P.2d 513 (1974).
N.C.—Heritage Village Church and Missionary Fellowship, Inc. v. State, 299 N.C. 399, 263 S.E.2d 726 (1980).
Tex.—HEB Ministries, Inc. v. Texas Higher Educ. Coordinating Bd., 235 S.W.3d 627, 226 Ed. Law Rep. 348 (Tex. 2007).
For a general discussion of the requirement of neutrality, see § 857.

10 U.S.—Board of Educ. of Kiryas Joel Village School Dist. v. Grumet, 512 U.S. 687, 114 S. Ct. 2481, 129 L. Ed. 2d 546, 91 Ed. Law Rep. 810 (1994).

11 U.S.—People of State of Ill. ex rel. McCollum v. Board of Ed. of School Dist. No. 71, Champaign County, Ill., 333 U.S. 203, 68 S. Ct. 461, 92 L. Ed. 649, 2 A.L.R.2d 1338 (1948).

12 U.S.—People of State of Ill. ex rel. McCollum v. Board of Ed. of School Dist. No. 71, Champaign County, Ill., 333 U.S. 203, 68 S. Ct. 461, 92 L. Ed. 649, 2 A.L.R.2d 1338 (1948).

13 U.S.—County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter, 492 U.S. 573, 109 S. Ct. 3086, 106 L. Ed. 2d 472 (1989) (abrogated on other grounds by, Town of Greece, N.Y. v. Galloway, 134 S. Ct. 1811, 188 L. Ed. 2d 835 (2014)).

14 U.S.—Everson v. Board of Ed. of Ewing Tp., 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711, 168 A.L.R. 1392 (1947).

15 U.S.—County of Allegheny v. American Civil Liberties Union Greater Pittsburgh Chapter, 492 U.S. 573, 109 S. Ct. 3086, 106 L. Ed. 2d 472 (1989) (abrogated on other grounds by, Town of Greece, N.Y. v. Galloway, 134 S. Ct. 1811, 188 L. Ed. 2d 835 (2014)).

N.J.—State v. Celmer, 80 N.J. 405, 404 A.2d 1 (1979).

16 U.S.—McCormick v. Hirsch, 460 F. Supp. 1337 (M.D. Pa. 1978).

17 Vt.—Mikell v. Town of Williston, 129 Vt. 586, 285 A.2d 713 (1971).

18 U.S.—Doe v. Phillips, 81 F.3d 1204 (2d Cir. 1996).

19 U.S.—Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971).

Cal.—Citizens for Parental Rights v. San Mateo County Bd. of Education, 51 Cal. App. 3d 1, 124 Cal. Rptr. 68, 82 A.L.R.3d 544 (1st Dist. 1975).

S.C.—Hunt v. McNair, 258 S.C. 97, 187 S.E.2d 645 (1972), judgment aff'd, 413 U.S. 734, 93 S. Ct. 2868, 37 L. Ed. 2d 923 (1973).

20 U.S.—Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971).

21 U.S.—Engel v. Vitale, 370 U.S. 421, 82 S. Ct. 1261, 8 L. Ed. 2d 601, 86 A.L.R.2d 1285 (1962).

22 U.S.—Gillette v. U.S., 401 U.S. 437, 91 S. Ct. 828, 28 L. Ed. 2d 168 (1971); Tooley v. Martin-Marietta Corp., 648 F.2d 1239 (9th Cir. 1981).

For a general discussion of the requirement of neutrality, see § 857.

23 U.S.—McGowan v. State of Md., 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961).

24 U.S.—School Dist. of Abington Tp., Pa. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963).

25 U.S.—School Dist. of Abington Tp., Pa. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963).

26 U.S.—Committee For Public Ed. and Religious Liberty v. Nyquist, 413 U.S. 756, 93 S. Ct. 2955, 37 L. Ed. 2d 948 (1973).

27 U.S.—Committee For Public Ed. and Religious Liberty v. Nyquist, 413 U.S. 756, 93 S. Ct. 2955, 37 L. Ed. 2d 948 (1973).

28 U.S.—Committee For Public Ed. and Religious Liberty v. Nyquist, 413 U.S. 756, 93 S. Ct. 2955, 37 L. Ed. 2d 948 (1973).

29 U.S.—Malnak v. Yogi, 440 F. Supp. 1284 (D.N.J. 1977), judgment aff'd, 592 F.2d 197 (3d Cir. 1979).

30 Ala.—Alabama Ed. Ass'n v. James, 373 So. 2d 1076 (Ala. 1979).

31 Ill.—People ex rel. Klinger v. Howlett, 56 Ill. 2d 1, 305 N.E.2d 129 (1973).

Mass.—Colo v. Treasurer and Receiver General, 378 Mass. 550, 392 N.E.2d 1195 (1979).

N.J.—Right to Choose v. Byrne, 91 N.J. 287, 450 A.2d 925 (1982).

32 S.C.—Parker v. Bates, 216 S.C. 52, 56 S.E.2d 723 (1949).

Utah—Thomas v. Daughters of Utah Pioneers, 114 Utah 108, 197 P.2d 477 (1948).

Wis.—Milwaukee County v. Carter, 258 Wis. 139, 45 N.W.2d 90 (1950).

Intent of constitutional amendment

N.H.—Opinion of the Justices, 99 N.H. 519, 113 A.2d 114 (1955).

33 Idaho—Board of County Com'rs of Twin Falls County v. Idaho Health Facilities Authority, 96 Idaho 498, 531 P.2d 588 (1974).

Mo.—Americans United v. Rogers, 538 S.W.2d 711 (Mo. 1976).

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16A C.J.S. Constitutional Law § 861

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

A. Introduction

2. Establishment of Religion

§ 861. Three-part test for validity of governmental action

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1295

Under the Establishment Clause of the First Amendment, government action which is not invalid on the basis of facial differentiation among religions must have a secular legislative purpose, must have a principal or primary effect which neither advances nor inhibits religion, and must not foster an excessive governmental entanglement with religion.

In every Establishment Clause case, it is necessary to reconcile the inescapable tension between the objective of preventing unnecessary intrusion of either the church or the state upon the other, and the reality that total separation of the two is not possible.[1] Whether a government activity violates the Establishment Clause is in large part a legal question to be answered on the basis of judicial interpretation of social facts, and every government practice must be judged in its unique circumstances.[2] When it is claimed that a law expresses a denominational preference, the initial inquiry is whether the law facially differentiates among religions.[3] If no such facial preference exists, a three-pronged inquiry is applied to determine whether the law violates the Establishment Clause.[4] Pursuant to such inquiry, legislation must satisfy each of three criteria:[5] first, it must have a secular legislative purpose;[6] second, its principal or primary effect must be one that neither advances nor inhibits religion;[7] and third, it must not foster an excessive governmental entanglement with religion.[8]

In determining whether governmental activity violates the Establishment Clause, the inquiry calls for line drawing; no fixed, per se rule can be framed.[9]

CUMULATIVE SUPPLEMENT

Cases:

Under the *Lemon v. Kurtzman* test for Establishment Clause challenges, a court must ask whether a challenged government action: (1) has a secular purpose; (2) has a principal or primary effect that neither advances nor inhibits religion; and (3) does not foster an excessive government entanglement with religion. U.S. Const. Amend. 1. American Legion v. American Humanist Association, 139 S. Ct. 2067 (2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Lynch v. Donnelly, 465 U.S. 668, 104 S. Ct. 1355, 79 L. Ed. 2d 604 (1984).

2 U.S.—Santa Fe Independent School Dist. v. Doe, 530 U.S. 290, 120 S. Ct. 2266, 147 L. Ed. 2d 295, 145 Ed. Law Rep. 21 (2000).

3 U.S.—Hernandez v. C.I.R., 490 U.S. 680, 109 S. Ct. 2136, 104 L. Ed. 2d 766 (1989).

4 U.S.—Hernandez v. C.I.R., 490 U.S. 680, 109 S. Ct. 2136, 104 L. Ed. 2d 766 (1989); VFW John O'Connor Post #4833 v. Santa Rosa County, Florida, 506 F. Supp. 2d 1079 (N.D. Fla. 2007).

5 U.S.—Larkin v. Grendel's Den, Inc., 459 U.S. 116, 103 S. Ct. 505, 74 L. Ed. 2d 297 (1982).
N.M.—Rayellen Resources, Inc. v. New Mexico Cultural Properties Review Committee, 2014-NMSC-006, 319 P.3d 639 (N.M. 2014).
Tex.—Spicer v. Texas Workforce Com'n, 430 S.W.3d 526 (Tex. App. Dallas 2014).

6 U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997); Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971).
Cal.—Foothill Communities Coalition v. County of Orange, 222 Cal. App. 4th 1302, 166 Cal. Rptr. 3d 627 (4th Dist. 2014), review denied, (Apr. 30, 2014).
N.M.—Rayellen Resources, Inc. v. New Mexico Cultural Properties Review Committee, 2014-NMSC-006, 319 P.3d 639 (N.M. 2014).
N.C.—State v. Yencer, 365 N.C. 292, 718 S.E.2d 615, 274 Ed. Law Rep. 1077 (2011).
Tex.—Spicer v. Texas Workforce Com'n, 430 S.W.3d 526 (Tex. App. Dallas 2014).

7 U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997); Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971).
Cal.—Foothill Communities Coalition v. County of Orange, 222 Cal. App. 4th 1302, 166 Cal. Rptr. 3d 627 (4th Dist. 2014), review denied, (Apr. 30, 2014).
N.M.—Rayellen Resources, Inc. v. New Mexico Cultural Properties Review Committee, 2014-NMSC-006, 319 P.3d 639 (N.M. 2014).
N.C.—State v. Yencer, 365 N.C. 292, 718 S.E.2d 615, 274 Ed. Law Rep. 1077 (2011).
Tex.—Spicer v. Texas Workforce Com'n, 430 S.W.3d 526 (Tex. App. Dallas 2014).
Inculcation of religious beliefs as advancement of religion
U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997).

8 U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997); Lemon v. Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971).

Cal.—Foothill Communities Coalition v. County of Orange, 222 Cal. App. 4th 1302, 166 Cal. Rptr. 3d 627 (4th Dist. 2014), review denied, (Apr. 30, 2014).
N.M.—Rayellen Resources, Inc. v. New Mexico Cultural Properties Review Committee, 2014-NMSC-006, 319 P.3d 639 (N.M. 2014).
N.C.—State v. Yencer, 365 N.C. 292, 718 S.E.2d 615, 274 Ed. Law Rep. 1077 (2011).
Tex.—Spicer v. Texas Workforce Com'n, 430 S.W.3d 526 (Tex. App. Dallas 2014).

9 U.S.—Lynch v. Donnelly, 465 U.S. 668, 104 S. Ct. 1355, 79 L. Ed. 2d 604 (1984).

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16A C.J.S. Constitutional Law § 862

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Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

A. Introduction

2. Establishment of Religion

§ 862. Three-part test for validity of governmental action—Secular purpose

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1296

The fact that a governmental action has a religious purpose does not mean that it cannot also have a secular purpose sufficient to satisfy the secular legislative purpose requirement, and government involvement in an activity of unquestionably religious origin does not contravene the Establishment Clause if its present purpose and effect is secular.

A statute will be invalidated on the ground that a secular purpose is lacking, thus violating Establishment Clause, only where there is no question that the statute or activity was motivated wholly by religious considerations.[1] In applying the secular purpose test, it is appropriate to ask whether the government's actual purpose is to endorse or disapprove of religion.[2] A court's finding of an improper religious purpose behind a statute is appropriately determined by the statute on its face, its legislative history, or its interpretation by a responsible administrative agency.[3] To determine the object of a law which burdens religion, the court must begin with its text, for the minimum requirement of neutrality is that the law not discriminate on its face, and a law lacks facial neutrality if it refers to a religious practice without a secular meaning discernible from the language or context.[4]

While the requirement that the law at issue serve a secular legislative purpose aims at preventing the relevant governmental decisionmaker from abandoning neutrality and acting with the intent of promoting a particular point of view in religious matters,

it is not necessary that the law's purpose be unrelated to religion, which would amount to a requirement that the government show callous indifference to religious groups.[5] Furthermore, the fact that a governmental action has a religious purpose does not mean that it cannot also have a secular purpose sufficient to satisfy the secular legislative purpose requirement,[6] and government involvement in an activity of unquestionably religious origin does not contravene the Establishment Clause if its present purpose and effect is secular.[7] Thus, aiding a religious institution to perform a secular task is not forbidden simply because aid to one aspect of the institution frees it to spend its resources on religious ends.[8]

Of course, official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with requirement of facial neutrality, as the Free Exercise Clause protects against governmental hostility which is masked as well as overt.[9] An avowed secular purpose of governmental action which appears to endorse beliefs of a particular religion may not be sufficient, if found to be self-serving, to avoid conflict with the Establishment Clause.[10] In other words, the stated secular purpose must be sincere and not a mere sham.[11] Thus, when a governmental entity professes a secular purpose for an arguably religious policy, the government's characterization is entitled to some deference, but it is nonetheless the duty of the courts to distinguish a sham secular purpose from a sincere one.[12] Furthermore, a secular purpose does not immunize from further scrutiny a law or governmental action which either has a primary effect that advances religion or which fosters excessive entanglement between church and state.[13]

Footnotes

1 Ill.—People v. Falbe, 189 Ill. 2d 635, 244 Ill. Dec. 901, 727 N.E.2d 200 (2000).
Mont.—Big Sky Colony, Inc. v. Montana Dept. of Labor and Industry, 2012 MT 320, 368 Mont. 66, 291 P.3d 1231 (2012), cert. denied, 134 S. Ct. 59, 187 L. Ed. 2d 26 (2013).

2 U.S.—Wallace v. Jaffree, 472 U.S. 38, 105 S. Ct. 2479, 86 L. Ed. 2d 29, 25 Ed. Law Rep. 39 (1985).
Mont.—Big Sky Colony, Inc. v. Montana Dept. of Labor and Industry, 2012 MT 320, 368 Mont. 66, 291 P.3d 1231 (2012), cert. denied, 134 S. Ct. 59, 187 L. Ed. 2d 26 (2013).

3 U.S.—Edwards v. Aguillard, 482 U.S. 578, 107 S. Ct. 2573, 96 L. Ed. 2d 510, 39 Ed. Law Rep. 958 (1987).
Motivations of individual legislators
Even though some legislators were motivated by a conviction that religious speech in particular is valuable and worthy of protection, that alone would not invalidate the Equal Access Act; it is the legislative purpose of the statute that is relevant to determination of whether there is secular purpose, not the possibly religious motives of legislators who enact the law.
U.S.—Board of Educ. of Westside Community Schools v. Mergens By and Through Mergens, 496 U.S. 226, 110 S. Ct. 2356, 110 L. Ed. 2d 191, 60 Ed. Law Rep. 320 (1990).

4 U.S.—Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993).

5 U.S.—Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos, 483 U.S. 327, 107 S. Ct. 2862, 97 L. Ed. 2d 273 (1987).

6 U.S.—Gilfillan v. City of Philadelphia, 637 F.2d 924 (3d Cir. 1980).
Nonsecular purpose must not dominate
N.J.—Marsa v. Wernik, 86 N.J. 232, 430 A.2d 888 (1981).

7 U.S.—Florey v. Sioux Falls School Dist. 49-5, 619 F.2d 1311 (8th Cir. 1980); O'Hair v. Paine, 312 F. Supp. 434 (W.D. Tex. 1969), judgment aff'd, 432 F.2d 66 (5th Cir. 1970).
Wis.—State ex rel. Warren v. Nusbaum, 64 Wis. 2d 314, 219 N.W.2d 577 (1974).

8 U.S.—Committee for Public Ed. and Religious Liberty v. Regan, 444 U.S. 646, 100 S. Ct. 840, 63 L. Ed. 2d 94 (1980); Roemer v. Board of Public Works of Maryland, 426 U.S. 736, 96 S. Ct. 2337, 49 L. Ed. 2d 179 (1976).

9 U.S.—Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993).

10 U.S.—Stone v. Graham, 449 U.S. 39, 101 S. Ct. 192, 66 L. Ed. 2d 199 (1980).

11 U.S.—Doe v. Indian River School Dist., 653 F.3d 256, 272 Ed. Law Rep. 44 (3d Cir. 2011).

12 U.S.—Santa Fe Independent School Dist. v. Doe, 530 U.S. 290, 120 S. Ct. 2266, 147 L. Ed. 2d 295, 145 Ed. Law Rep. 21 (2000).

13 U.S.—Allen v. Morton, 495 F.2d 65 (D.C. Cir. 1973).

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16A C.J.S. Constitutional Law § 863

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Constitutional Law
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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

A. Introduction

2. Establishment of Religion

§ 863. Three-part test for validity of governmental action—Effect

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1298, 1299, 1301

Government activity may not have the primary effect of advancing religion, and this determination involves a balancing test, considering variables such as the degree of sectarianism in the institution or event with which the government is involved, the extent of the government's involvement, and the controls placed thereon.

The Establishment Clause forbids a state to hide behind the application of formally neutral criteria and remain studiously oblivious to the effects of its actions.[1] The question of whether government activity has the primary effect of advancing religion involves a balancing test, considering variables such as the degree of sectarianism in the institution or event with which the government is involved, the extent of the government's involvement, and the controls placed thereon.[2] A program which in some manner aids an institution with a religious affiliation does not necessarily violate the Establishment clause,[3] and a law is not necessarily invalid because it confers an indirect, remote, or incidental benefit upon religious institutions.[4] So, the enjoyment of merely "incidental" benefits by a religious organization does not result in the primary advancement of religion,[5] the crucial question being not whether some benefit accrues to a religious institution as a consequence of legislative program but whether its principal or primary effect advances religion.[6] Public aid may be thought to have a primary effect of advancing religion

when it flows to "pervasively sectarian" institutions,[7] i.e., institutions in which religion is so pervasive that a substantial portion of its functions are subsumed in the religious mission[8] or it funds a specifically religious activity in an otherwise substantially secular setting.[9] Primary criteria used to evaluate whether government aid has the effect of advancing religion are whether it results in governmental indoctrination, defines its recipients by reference to religion, or create an excessive entanglement.[10] A statute having a primarily secular effect does not violate the Establishment Clause merely because it happens to coincide or harmonize with the tenets of some or all religions.[11]

CUMULATIVE SUPPLEMENT

Cases:

Religious Aid Clause of the New Jersey Constitution, by prohibiting county's award of historic preservation grants to fund repairs of several churches, did not conflict with the First Amendment's Free Exercise Clause; the churches were not denied grant funds under the Religious Aid Clause because they were religious institutions, but were denied funds because of what they planned to do, namely, use funds to repair church buildings so that religious worship services could be held there, New Jersey had a historic and substantial interest against the establishment of, and compelled support for, religion, and no history of discrimination tainted the Clause. U.S. Const. Amend. 1; N.J. Const. art. 1, par. 3. Freedom From Religion Foundation v. Morris County Board of Chosen Freeholders, 232 N.J. 543, 181 A.3d 992 (2018).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Santa Fe Independent School Dist. v. Doe, 530 U.S. 290, 120 S. Ct. 2266, 147 L. Ed. 2d 295, 145 Ed. Law Rep. 21 (2000).

2 U.S.—Allen v. Morton, 495 F.2d 65 (D.C. Cir. 1973).
Identity of recipient not necessarily dispositive
U.S.—National Coalition for Public Ed. and Religious Liberty v. Harris, 489 F. Supp. 1248 (S.D. N.Y. 1980).

3 U.S.—Mueller v. Allen, 463 U.S. 388, 103 S. Ct. 3062, 77 L. Ed. 2d 721, 11 Ed. Law Rep. 763 (1983).

4 U.S.—Committee For Public Ed. and Religious Liberty v. Nyquist, 413 U.S. 756, 93 S. Ct. 2955, 37 L. Ed. 2d 948 (1973).
Policies with secular objectives may incidentally benefit religion
U.S.—Texas Monthly, Inc. v. Bullock, 489 U.S. 1, 109 S. Ct. 890, 103 L. Ed. 2d 1 (1989).

5 U.S.—Americans United for Separation of Church and State v. Porter, 485 F. Supp. 432 (W.D. Mich. 1980); Mueller v. Allen, 514 F. Supp. 998 (D. Minn. 1981), judgment aff'd, 676 F.2d 1195, 4 Ed. Law Rep. 24 (8th Cir. 1982), judgment aff'd, 463 U.S. 388, 103 S. Ct. 3062, 77 L. Ed. 2d 721, 11 Ed. Law Rep. 763 (1983).
Mich.—Citizens to Advance Public Ed. v. Porter, 65 Mich. App. 168, 237 N.W.2d 232 (1975).
Breadth of class benefited
U.S.—Public Funds for Public Schools of New Jersey v. Byrne, 590 F.2d 514 (3d Cir. 1979), judgment aff'd, 442 U.S. 907, 99 S. Ct. 2818, 61 L. Ed. 2d 273 (1979) and judgment aff'd, 442 U.S. 907, 99 S. Ct. 2818, 61 L. Ed. 2d 273 (1979).
Question of degree
Pa.—Springfield School Dist., Delaware County v. Department of Ed., 483 Pa. 539, 397 A.2d 1154 (1979).

6 U.S.—Tilton v. Richardson, 403 U.S. 672, 91 S. Ct. 2091, 29 L. Ed. 2d 790 (1971).

7 U.S.—Bowen v. Kendrick, 487 U.S. 589, 108 S. Ct. 2562, 101 L. Ed. 2d 520 (1988).

8 U.S.—Allen v. Morton, 495 F.2d 65 (D.C. Cir. 1973).
Wis.—State ex rel. Warren v. Nusbaum, 64 Wis. 2d 314, 219 N.W.2d 577 (1974).
Opportunity for indoctrination determinative factor

Wis.—State ex rel. Wisconsin Health Facilities Authority v. Lindner, 91 Wis. 2d 145, 280 N.W.2d 773 (1979).

9 U.S.—Allen v. Morton, 495 F.2d 65 (D.C. Cir. 1973).

Wis.—State ex rel. Wisconsin Health Facilities Authority v. Lindner, 91 Wis. 2d 145, 280 N.W.2d 773 (1979).

10 U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997); Americans United for Separation of Church and State v. Prison Fellowship Ministries, Inc., 509 F.3d 406 (8th Cir. 2007); Person v. Mayor and City Council of Baltimore, 437 F. Supp. 2d 476 (D. Md. 2006).

11 U.S.—Hernandez v. C.I.R., 490 U.S. 680, 109 S. Ct. 2136, 104 L. Ed. 2d 766 (1989); Commack Self-Service Kosher Meats, Inc. v. Hooker, 680 F.3d 194 (2d Cir. 2012).

Tex.—Spicer v. Texas Workforce Com'n, 430 S.W.3d 526 (Tex. App. Dallas 2014).

Sodomy

Cal.—People v. Baldwin, 37 Cal. App. 3d 385, 112 Cal. Rptr. 290 (4th Dist. 1974).

D.C.—Stewart v. U. S., 364 A.2d 1205 (D.C. 1976).

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Constitutional Law
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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

A. Introduction

2. Establishment of Religion

§ 864. Three-part test for validity of governmental action—Excessive entanglement

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1300

An impermissible merging or intermeddling of the proper spheres of religion and government runs afoul of the First Amendment's Establishment Clause.

The essence of a First Amendment inquiry in the religious area is entanglement,[1] a factor which may be considered as separate and apart from the effect of governmental action or as an aspect of the inquiry into a statute's effect.[2] Entanglement between church and state must be excessive before it runs afoul of the Establishment Clause.[3] Excessive entanglement between state and religion may be defined as an impermissible merging or intermeddling of the proper spheres of religion and government.[4] The entanglement may be either substantive or procedural,[5] or, as it has also been stated, it may relate to both the political[6] and the administrative[7] ramifications of government involvement.

A determination of the excessive entanglement with religion by a statute involves an examination of the character and purpose of the institution involved[8] (e.g., whether the religious institution is "predominantly religious"),[9] the nature of the aid the state provides[10] (e.g., whether it is neutral and nonideological),[11] and the resulting relationship between the government and the

religious authority.[12] The question of excessive political entanglement involves an inquiry into the level and nature of political activity governmental aid may engender and an analysis of the possible consequences of such activity in fractionalizing the electorate along religious lines.[13] Administrative entanglement focuses upon the use to which governmental aid is put, the form in which it is provided, the persons or institutions to whom the aid is directed, and extent to which the State must intervene to ensure that moneys are being used for permissible secular purposes.[14] Whether entanglement with religion involved in administering a government program is excessive is a question of degree and must be determined by the facts of the particular case.[15]

Routine regulatory interaction which involves no inquiries into religious doctrine, no delegation of state power to a religious body, and no detailed monitoring and close administrative contact between secular and religious bodies does not of itself violate the nonentanglement command.[16] Furthermore, excessive entanglement is not made out merely by contentions that a program will require pervasive monitoring by public authorities to ensure against the inculcation of religion, that the program will require administrative cooperation between a governmental agency and religious institutions, and that the program might increase the dangers of political divisiveness.[17]

Footnotes

1 U.S.—Grutka v. Barbour, 549 F.2d 5 (7th Cir. 1977).

2 **Simplest to treat entanglement as aspect of effect**
U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997).

3 U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997); Geneva College v. Sebelius, 929 F. Supp. 2d 402 (W.D. Pa. 2013).
N.J.—Abdelhak v. Jewish Press Inc., 411 N.J. Super. 211, 985 A.2d 197 (App. Div. 2009).
Tex.—Spicer v. Texas Workforce Com'n, 430 S.W.3d 526 (Tex. App. Dallas 2014).

4 U.S.—American Civil Liberties Union of Georgia v. Rabun County Chamber of Commerce, Inc., 510 F. Supp. 886 (N.D. Ga. 1981), aff'd and remanded on other grounds, 678 F.2d 1379 (11th Cir. 1982), reh'g denied and opinion modified on other grounds, 698 F.2d 1098 (11th Cir. 1983).

5 N.J.—McKelvey v. Pierce, 173 N.J. 26, 800 A.2d 840, 166 Ed. Law Rep. 673 (2002).

6 U.S.—Decker v. O'Donnell, 661 F.2d 598 (7th Cir. 1980); Roemer v. Board of Public Works of State of Md., 387 F. Supp. 1282 (D. Md. 1974), judgment aff'd, 426 U.S. 736, 96 S. Ct. 2337, 49 L. Ed. 2d 179 (1976).

7 U.S.—Roemer v. Board of Public Works of State of Md., 387 F. Supp. 1282 (D. Md. 1974), judgment aff'd, 426 U.S. 736, 96 S. Ct. 2337, 49 L. Ed. 2d 179 (1976).
Mich.—Snyder v. Charlotte Public School Dist., Eaton County, 421 Mich. 517, 365 N.W.2d 151, 24 Ed. Law Rep. 466, 43 A.L.R.4th 745 (1984).

8 U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997).
Miss.—Roman Catholic Diocese of Jackson v. Morrison, 905 So. 2d 1213 (Miss. 2005).
Ohio—Simmons-Harris v. Goff, 86 Ohio St. 3d 1, 1999-Ohio-77, 711 N.E.2d 203, 135 Ed. Law Rep. 596, 78 A.L.R.5th 623 (1999).

9 U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997).

10 U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997).
Miss.—Roman Catholic Diocese of Jackson v. Morrison, 905 So. 2d 1213 (Miss. 2005).
Ohio—Simmons-Harris v. Goff, 86 Ohio St. 3d 1, 1999-Ohio-77, 711 N.E.2d 203, 135 Ed. Law Rep. 596, 78 A.L.R.5th 623 (1999).
Intention and effect
U.S.—U.S. v. Freedom Church, 613 F.2d 316 (1st Cir. 1979).

Factual record delineating character of entanglement

U.S.—Grutka v. Barbour, 549 F.2d 5 (7th Cir. 1977).

11 U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997).

12 U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997).

Miss.—Roman Catholic Diocese of Jackson v. Morrison, 905 So. 2d 1213 (Miss. 2005).

Ohio—Simmons-Harris v. Goff, 86 Ohio St. 3d 1, 1999-Ohio-77, 711 N.E.2d 203, 135 Ed. Law Rep. 596, 78 A.L.R.5th 623 (1999).

13 U.S.—Kosydar v. Wolman, 353 F. Supp. 744 (S.D. Ohio 1972), judgment aff'd, 413 U.S. 901, 93 S. Ct. 3062, 37 L. Ed. 2d 1021 (1973).

Mich.—Snyder v. Charlotte Public School Dist., Eaton County, 421 Mich. 517, 365 N.W.2d 151, 24 Ed. Law Rep. 466, 43 A.L.R.4th 745 (1984).

14 U.S.—Americans United for Separation of Church and State v. Bubb, 379 F. Supp. 872 (D. Kan. 1974); Kosydar v. Wolman, 353 F. Supp. 744 (S.D. Ohio 1972), judgment aff'd, 413 U.S. 901, 93 S. Ct. 3062, 37 L. Ed. 2d 1021 (1973).

15 U.S.—Thomas v. Schmidt, 397 F. Supp. 203 (D.R.I. 1975), aff'd, 539 F.2d 701 (1st Cir. 1976).

16 U.S.—Hernandez v. C.I.R., 490 U.S. 680, 109 S. Ct. 2136, 104 L. Ed. 2d 766 (1989).

17 U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997).

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16A C.J.S. Constitutional Law § 865

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

A. Introduction

3. Free Exercise of Religion

§ 865. Free exercise of religion, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1303

The Free Exercise Clause of the First Amendment, applicable to the states through the Fourteenth Amendment, precludes governmental interference with private religious belief or nonbelief.

The free exercise of religion, as protected by the Free Exercise Clause of the first amendment,[1] is a fundamental constitutional right,[2] including the right to believe and profess whatever religious doctrine one desires,[3] totally free from governmental compulsion, as well as the right of nonbelief.[4] The purpose of the Free Exercise Clause of the First Amendment is to secure religious liberty in the individual by prohibiting any invasion thereof by civil authority,[5] and the clause provides substantial protection for lawful conduct grounded in religious belief.[6] Under the Free Exercise Clause, the government may not compel the affirmation of any religious belief, punish the expression of any religious doctrine it believes to be false, impose special disabilities on the basis of one's religious views or religious status, or lend its power to one or the other side in controversies over religious authority or dogma.[7] In other words, the government may not regulate religious beliefs as such by compelling or punishing their affirmation, nor may it target conduct for regulation only because it is undertaken for religious reasons.[8]

The Free Exercise Clause constitutes an absolute[9] prohibition against governmental regulation of religious beliefs,[10] bars interference with the dissemination of religious ideas,[11] and withdraws from legislative power the exertion of any restraint on the free exercise of religion.[12]

Internal governmental affairs.

The Free Exercise Clause does not require the government to conduct its internal affairs in ways which comport with the religious beliefs of particular citizens.[13]

CUMULATIVE SUPPLEMENT

Cases:

The Free Exercise Clause, which applies to the States under the Fourteenth Amendment, protects religious observers against unequal treatment and against laws that impose special disabilities on the basis of religious status. U.S. Const. Amends. 1, 14. Espinoza v. Montana Department of Revenue, 140 S. Ct. 2246 (2020).

The federal system prizes state experimentation, but not state experimentation in the suppression of free speech, and the same goes for the free exercise of religion. U.S. Const. Amend. 1. Espinoza v. Montana Department of Revenue, 140 S. Ct. 2246 (2020).

The Free Exercise Clause protects religious observers against unequal treatment and subjects to the strictest scrutiny laws that target the religious for special disabilities based on their religious status. U.S.C.A. Const.Amend. 1. Trinity Lutheran Church of Columbia, Inc. v. Comer, 2017 WL 2722410 (U.S. 2017).

Denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest of the highest order. U.S.C.A. Const.Amend. 1. Trinity Lutheran Church of Columbia, Inc. v. Comer, 2017 WL 2722410 (U.S. 2017).

Free exercise challenge by church, which operated preschool and daycare center, to denial by Missouri Department of Natural Resources of grant for purchase of rubber playground surfaces, which denial was based on Department's policy of denying grants to religiously affiliated applicants, was subject to the strictest scrutiny, since policy expressly discriminated against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character. U.S.C.A. Const.Amend. 1. Trinity Lutheran Church of Columbia, Inc. v. Comer, 2017 WL 2722410 (U.S. 2017).

Denial by Missouri Department of Natural Resources of application by church, which operated preschool and daycare center, for grant to purchase rubber playground surfaces, which denial was based on Department's policy of denying grants to religiously affiliated applicants, was denial of church's free exercise rights; Missouri's policy preference for skating as far as possible from religious establishment concerns was not a compelling interest. U.S.C.A. Const.Amend. 1. Trinity Lutheran Church of Columbia, Inc. v. Comer, 2017 WL 2722410 (U.S. 2017).

First Amendment right to free exercise of religion includes right to engage in conduct that is motivated by religious beliefs held by individual asserting claim. U.S.C.A. Const.Amend. 1. Bible Believers v. Wayne County, Mich., 805 F.3d 228 (6th Cir. 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S. Const. Amend. I.

2 U.S.—Johnson v. Robison, 415 U.S. 361, 94 S. Ct. 1160, 39 L. Ed. 2d 389 (1974); U.S. v. Silberman, 464 F. Supp. 866 (M.D. Fla. 1979).
Fla.—Town v. State ex rel. Reno, 377 So. 2d 648 (Fla. 1979).
Fundamental nonpersecution principle
U.S.—Priests For Life v. U.S. Dept. of Health and Human Services, 772 F.3d 229 (D.C. Cir. 2014).

3 U.S.—Employment Div., Dept. of Human Resources of Oregon v. Smith, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990); Lewis v. New York City Transit Authority, 12 F. Supp. 3d 418 (E.D. N.Y. 2014).
Cal.—North Coast Women's Care Medical Group, Inc. v. San Diego County Superior Court, 44 Cal. 4th 1145, 81 Cal. Rptr. 3d 708, 189 P.3d 959 (2008).
Iowa—Mitchell County v. Zimmerman, 810 N.W.2d 1 (Iowa 2012).

4 U.S.—Johnson v. Board of County Com'rs of Bernalillo County, 528 F. Supp. 919 (D.N.M. 1981), decision rev'd on other grounds, 781 F.2d 777 (10th Cir. 1985).
Coercion, see § 869.

5 U.S.—School Dist. of Abington Tp., Pa. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963); Gaines v. Anderson, 421 F. Supp. 337 (D. Mass. 1976).
N.H.—Opinion of the Justices, 108 N.H. 97, 228 A.2d 161 (1967).

6 U.S.—Bob Jones University v. U.S., 461 U.S. 574, 103 S. Ct. 2017, 76 L. Ed. 2d 157, 10 Ed. Law Rep. 918 (1983).

7 U.S.—Employment Div., Dept. of Human Resources of Oregon v. Smith, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990).
Much of the litigation in this field is, in actuality, decided under the Religious Freedom Restoration Act, which generally imposes a lesser burden on plaintiffs than a normal First Amendment challenge. For general coverage of the Act, see C.J.S., Civil Rights § 446.

8 Cal.—Catholic Charities of Sacramento, Inc. v. Superior Court, 32 Cal. 4th 527, 10 Cal. Rptr. 3d 283, 85 P.3d 67 (2004).
Impairment
A free exercise of religion may be impaired not only by governmental prohibition of that which one's religious belief demands but also by governmental compulsion of that which one's religious belief forbids.
N.C.—In re Williams, 269 N.C. 68, 152 S.E.2d 317 (1967).

9 U.S.—Bob Jones University v. U.S., 461 U.S. 574, 103 S. Ct. 2017, 76 L. Ed. 2d 157, 10 Ed. Law Rep. 918 (1983).

10 U.S.—Gillette v. U.S., 401 U.S. 437, 91 S. Ct. 828, 28 L. Ed. 2d 168 (1971); E.E.O.C. v. Pacific Press Pub. Ass'n, 676 F.2d 1272 (9th Cir. 1982).
N.J.—New Jersey State Bd. of Higher Educ. v. Board of Directors of Shelton College, 90 N.J. 470, 448 A.2d 988, 5 Ed. Law Rep. 1170 (1982).

11 U.S.—Gillette v. U.S., 401 U.S. 437, 91 S. Ct. 828, 28 L. Ed. 2d 168 (1971).

12 U.S.—School Dist. of Abington Tp., Pa. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963); Jaffree By and Through Jaffree v. James, 544 F. Supp. 727, 5 Ed. Law Rep. 1153 (S.D. Ala. 1982).
Cal.—Johnson v. Huntington Beach Union High Sch. Dist., 68 Cal. App. 3d 1, 137 Cal. Rptr. 43 (4th Dist. 1977).

13 U.S.—Bowen v. Roy, 476 U.S. 693, 106 S. Ct. 2147, 90 L. Ed. 2d 735 (1986).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

A. Introduction

3. Free Exercise of Religion

§ 866. Applicability of free exercise guarantee to states

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1303

The proscription against laws prohibiting the free exercise of religion is applicable, through the Fourteenth Amendment, to the states. Also, the free exercise of religion is protected under some state constitutions.

The proscription against laws prohibiting the free exercise of religion is applicable, through the Fourteenth Amendment, to the states.[1]

The free exercise of religion is protected under some state constitutions.[2] The term "rights of conscience" as used in a religious liberty provision, when required to be construed in relation to the right to worship according to the dictates of one's own conscience, results in the freedom protected thereby from being more extensive than the freedom to exercise one's religion protected by the First Amendment.[3]

Under one state constitution's free exercise clause, a two-part test governs claims challenging facially neutral laws. The challenger must show that religion is involved, that the conduct in question is religiously based, and that the claimant is sincere in his or her religious belief, and secondly, the court must consider whether the affected conduct poses some substantial threat

to public safety, peace, or order, or whether there are competing governmental interests that are of the highest order and are not otherwise served.[4] Under another state's constitution as interpreted by that state's highest court, the fact that a statute has some identifiable secular objective does not immunize it from further analysis to ascertain whether it has a direct, immediate, and substantial effect of advancing religion.[5]

To challenge a governmental regulation of general applicability as being in violation of the religious freedom provision of one state's constitution, the challenger must demonstrate that the activity burdened by the regulation is motivated by a sincerely held religious belief and that the challenged regulation restrains the free exercise of that religious belief; if the challenger makes those showings, the burden shifts and the State can prevail only by proving both that the challenged regulation is motivated by a compelling public interest and that no less restrictive means can adequately achieve that compelling public interest.[6]

Under a provision of a state constitution prohibiting all state interference with freedom of conscience, a state court considers whether: (1) the objector's belief is sincerely held; (2) the state action burdens the exercise of religious beliefs; (3) the state's interest is overriding or compelling; and (4) the state action uses the least restrictive means.[7]

Under a state's strict scrutiny test for determining whether the free exercise of religion has been impinged upon, the complaining party must first prove that government action has had a coercive effect on his or her practice of religion, and once a coercive effect is established, the burden of proof shifts to the government to show that the restrictions served a compelling state interest and are the least restrictive means for achieving the government objective, failing which, the restrictions are unconstitutional.[8]

CUMULATIVE SUPPLEMENT

Cases:

County's process for selecting volunteer invocation-givers for opening prayer at start of board meetings violated Establishment Clause; board lacked formal written policy for selection of speakers, selection process granted plenary authority to each board commissioner on a rotating basis, nearly all the commissioners exercised that authority in a way that categorically excluded some religions, barring secular invocations and supplications from organizations whose tenets promoted science, nature, or ethics, and placed additional burdens on others based on the content of religious beliefs, setting higher bar for religions the commissioners were unfamiliar with or for those that they knew of but did not particularly like or prefer. U.S. Const. Amend. 1. Williamson v. Brevard County, 928 F.3d 1296 (11th Cir. 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Christian Legal Soc. Chapter of the University of California, Hastings College of the Law v. Martinez, 561 U.S. 661, 130 S. Ct. 2971, 177 L. Ed. 2d 838, 57 A.L.R. Fed. 2d 573 (2010).
Miss.—Chabad-Lubavitch of Michigan v. Schuchman, 305 Mich. App. 337, 853 N.W.2d 390 (2014).
Mont.—St. John's Lutheran Church v. State Compensation Ins. Fund, 252 Mont. 516, 830 P.2d 1271 (1992).

2 Alaska—Larson v. Cooper, 90 P.3d 125 (Alaska 2004).
Colo.—In re Marriage of Short, 698 P.2d 1310 (Colo. 1985).
Me.—Fortin v. The Roman Catholic Bishop of Portland, 2005 ME 57, 871 A.2d 1208 (Me. 2005).
Minn.—State v. Hershberger, 462 N.W.2d 393 (Minn. 1990).
Wash.—Munns v. Martin, 131 Wash. 2d 192, 930 P.2d 318 (1997).
Freedom to worship according to dictates of conscience

N.M.—Elane Photography, LLC v. Willock, 2012-NMCA-086, 284 P.3d 428 (N.M. Ct. App. 2012), judgment aff'd, 2013-NMSC-040, 309 P.3d 53 (N.M. 2013), cert. denied, 134S. Ct.1787, 188 L. Ed. 2d 757 (2014).

Tenn.—Christ Church Pentecostal v. Tennessee State Bd. of Equalization, 428 S.W.3d 800 (Tenn. Ct. App. 2013), appeal denied, (Aug. 27, 2013).

3 N.C.—In re Williams, 269 N.C. 68, 152 S.E.2d 317 (1967).

4 Alaska—Larson v. Cooper, 90 P.3d 125 (Alaska 2004).

5 Cal.—California Educational Facilities Authority v. Priest, 12 Cal. 3d 593, 116 Cal. Rptr. 361, 526 P.2d 513 (1974).

6 Me.—Fortin v. The Roman Catholic Bishop of Portland, 2005 ME 57, 871 A.2d 1208 (Me. 2005).

7 Minn.—Odenthal v. Minnesota Conference of Seventh-Day Adventists, 649 N.W.2d 426 (Minn. 2002).

8 Wash.—Munns v. Martin, 131 Wash. 2d 192, 930 P.2d 318 (1997).

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16A C.J.S. Constitutional Law § 867

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

A. Introduction

3. Free Exercise of Religion

§ 867. Belief or practice must constitute "religion"

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1305

To come within the protection of the Free Exercise Clause of the First Amendment, a belief or practice must be considered a religion although such protection is not restricted to an orthodox religion or one having a concept of God.

It is necessary for an activity to embody religious teachings in order for it to come within the protection of the First Amendment.[1] Although a determination of what is a "religious" belief or practice entitled to constitutional protection under the Free Exercise Clause may present a most delicate question, the very concept of ordered liberty precludes allowing every person to make his or her own standards on matters of conduct in which society as a whole has important interests.[2] The "religious beliefs" that fall within the ambit of the First Amendment are those that stem from a person's moral, ethical, or religious beliefs about what is right and wrong and that are held with the strength of traditional religious convictions.[3] A free exercise claim must be rooted in religious belief, not in purely secular philosophical concerns.[4] However, the fact that a religion is of relatively recent origin does not remove it from the scope of constitutional protection.[5] The constitutional protection is not restricted to orthodox religious practices,[6] and it extends to the practice of unorthodox as well as orthodox religious beliefs.[7] Furthermore, religious beliefs need

not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection,[8] and courts are therefore precluded from inquiring into the truth, validity, or reasonableness of religious beliefs,[9] or the sources thereof.[10]

If a group or individual professes beliefs which are similar to and function like beliefs of those groups which are recognized as a religion, the guaranty of freedom of religion applies.[11] Thus, the protections of the First Amendment are extended not only to those whose religious beliefs are held by organized religions[12] (although the fact that a defendant's belief is espoused by an organization does not, in and of itself, establish that belief is a religious belief)[13] but also to individually held religious convictions.[14] It is applicable alike to religions based on a belief in God and those founded on other beliefs.[15]

In order to qualify for First Amendment protection, a religion is not required to meet any organizational or doctrinal test.[16] Accordingly, an activity may be regarded as religious even though it is not associated with a recognized religious sect,[17] or even in the absence of elements commonly associated with religion, such as clergy, places of worship, or explicit moral codes.[18]

Although generally the First Amendment bars an inquiry into the bona fides of a religious group,[19] a new faith may nevertheless be required to demonstrate that it is entitled to be constitutionally protected as a religion[20] as not every enterprise cloaking itself in the name of a religion can claim the constitutional protection conferred on religions.[21] The history of a religious belief and the length of time that it has been held are factors to be utilized in assessing the sincerity with which it is held.[22] Additionally, a demonstrated willingness to be incarcerated is evidence to establish that a religious belief is sincerely held.[23] Consistency with the tenets of a well-established religion may be persuasive evidence on the issue of sincerity;[24] but it is not an essential characteristic of protected religious expression.[25] The mere fact that an activity comes under religious auspices does not mandate constitutional protection.[26]

While the sincerity of an avowed adherent of a particular religion may be judicially investigated,[27] an inquiry into the sincerity of the religious beliefs held by a new faith should focus on extrinsic evidence,[28] as the truth or falsity of religious beliefs may not be judicially determined.[29]

Relationship of practice to belief.

In order to be protected, a particular form of religious expression need not be mandated by one's religion or even endorsed by a majority of its adherents.[30] So long as it is deeply rooted in religious belief, the practice at issue need not be absolutely essential to the religion in question[31] and need not take the form of a ritual or ceremony typical of or required by a particular religion.[32]

In the context of determining whether a county ordinance barring steel wheels on hard surfaced roads violates the rights of members of the Mennonite Church to the free exercise of religion, the use of steel wheels on motorized vehicles has been held to be not merely a "rule," but, rather, a religious belief or practice, since the use of steel wheels has been a longstanding church requirement, and someone who does not follow that precept will be barred from the church.[33]

Footnotes

1 U.S.—Malnak v. Yogi, 440 F. Supp. 1284 (D.N.J. 1977), judgment aff'd, 592 F.2d 197 (3d Cir. 1979).

2 Cal.—Catholic Charities of Sacramento, Inc. v. Superior Court, 32 Cal. 4th 527, 10 Cal. Rptr. 3d 283, 85 P.3d 67 (2004).

3 U.S.—U.S. v. Ward, 989 F.2d 1015, 37 Fed. R. Evid. Serv. 388 (9th Cir. 1992).

4 U.S.—Thomas v. Review Bd. of Indiana Employment Sec. Division, 450 U.S. 707, 101 S. Ct. 1425, 67 L. Ed. 2d 624 (1981).

Mass.—Attorney General v. Bailey, 386 Mass. 367, 436 N.E.2d 139, 4 Ed. Law Rep. 834 (1982).

5 U.S.—Church of Scientology Mission of Davis v. Christofferson, 459 U.S. 1227, 103 S. Ct. 1234, 75 L. Ed. 2d 468 (1983).

Ariz.—In re Marriage of Gove, 117 Ariz. 324, 572 P.2d 458 (Ct. App. Div. 1 1977).

Or.—Christofferson v. Church of Scientology of Portland, 57 Or. App. 203, 644 P.2d 577, 40 A.L.R.4th 1017 (1982).

Religion postdating Bill of Rights

U.S.—Malnak v. Yogi, 440 F. Supp. 1284 (D.N.J. 1977), judgment aff'd, 592 F.2d 197 (3d Cir. 1979).

6 U.S.—U.S. v. Ballard, 322 U.S. 78, 64 S. Ct. 882, 88 L. Ed. 1148 (1944); Sequoyah v. Tennessee Valley Authority, 620 F.2d 1159 (6th Cir. 1980).

Jehovah's Witnesses entitled to freedom of religion

U.S.—Sellers v. Johnson, 163 F.2d 877 (C.C.A. 8th Cir. 1947).

N.Y.—People, on Inf. Hotaling, v. Dale, 47 N.Y.S.2d 702 (N.Y. City Ct. 1944).

Krishna Consciousness as religion

U.S.—International Soc. For Krishna Consciousness, Inc. v. Barber, 650 F.2d 430 (2d Cir. 1981).

"Sikh Dharma" established and recognized religion

Kan.—Wright v. Raines, 1 Kan. App. 2d 494, 571 P.2d 26 (1977).

7 Iowa—Rudd v. Ray, 248 N.W.2d 125 (Iowa 1976).

Md.—McMillan v. State, 258 Md. 147, 265 A.2d 453 (1970).

N.C.—Heritage Village Church and Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979), judgment aff'd, 299 N.C. 399, 263 S.E.2d 726 (1980).

Numerical strength not required

Tenn.—State ex rel. Swann v. Pack, 527 S.W.2d 99 (Tenn. 1975).

8 U.S.—Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993).

Abhorrent beliefs protected

N.Y.—People v. Wood, 93 Misc. 2d 25, 402 N.Y.S.2d 726 (J. Ct. 1978).

9 U.S.—Callahan v. Woods, 658 F.2d 679 (9th Cir. 1981).

Colo.—Johnson v. Motor Vehicle Division, Dept. of Revenue, 197 Colo. 455, 593 P.2d 1363 (1979).

N.J.—New Jersey State Bd. of Higher Educ. v. Board of Directors of Shelton College, 90 N.J. 470, 448 A.2d 988, 5 Ed. Law Rep. 1170 (1982).

10 **Revelation, study, upbringing, gradual evolution, or incomprehensible source**

U.S.—Callahan v. Woods, 658 F.2d 679 (9th Cir. 1981).

11 U.S.—Loney v. Scurr, 474 F. Supp. 1186 (S.D. Iowa 1979).

12 U.S.—International Soc. for Krishna Consciousness of Houston, Inc. v. City of Houston, Tex., 482 F. Supp. 852 (S.D. Tex. 1979), judgment rev'd on other grounds, 689 F.2d 541 (5th Cir. 1982).

Ariz.—In re Marriage of Gove, 117 Ariz. 324, 572 P.2d 458 (Ct. App. Div. 1 1977).

13 N.M.—State v. Brashear, 92 N.M. 622, 1979-NMCA-027, 593 P.2d 63 (Ct. App. 1979).

14 U.S.—International Soc. for Krishna Consciousness of Houston, Inc. v. City of Houston, Tex., 482 F. Supp. 852 (S.D. Tex. 1979), judgment rev'd on other grounds, 689 F.2d 541 (5th Cir. 1982).

Ariz.—In re Marriage of Gove, 117 Ariz. 324, 572 P.2d 458 (Ct. App. Div. 1 1977).

N.M.—State v. Brashear, 92 N.M. 622, 1979-NMCA-027, 593 P.2d 63 (Ct. App. 1979).

N.C.—Heritage Village Church and Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979), judgment aff'd, 299 N.C. 399, 263 S.E.2d 726 (1980).

15 U.S.—Theriault v. Silber, 547 F.2d 1279 (5th Cir. 1977).

Cal.—Young Life Campaign v. Patino, 122 Cal. App. 3d 559, 176 Cal. Rptr. 23 (3d Dist. 1981).

N.J.—In re Adoption of E, 59 N.J. 36, 279 A.2d 785, 48 A.L.R.3d 366 (1971).

16 **Cherokee Indians**

U.S.—Sequoyah v. Tennessee Valley Authority, 620 F.2d 1159 (6th Cir. 1980).

17 U.S.—Malnak v. Yogi, 440 F. Supp. 1284 (D.N.J. 1977), judgment aff'd, 592 F.2d 197 (3d Cir. 1979).

18 U.S.—Malnak v. Yogi, 440 F. Supp. 1284 (D.N.J. 1977), judgment aff'd, 592 F.2d 197 (3d Cir. 1979); Stevens v. Berger, 428 F. Supp. 896 (E.D. N.Y. 1977).

19 U.S.—Rankin v. Howard, 527 F. Supp. 976 (D. Ariz. 1981).

20 U.S.—Van Schaick v. Church of Scientology of California, Inc., 535 F. Supp. 1125 (D. Mass. 1982).

One's own characterization not determinative

U.S.—Africa v. State of Pa., 520 F. Supp. 967 (E.D. Pa. 1981), judgment aff'd, 662 F.2d 1025 (3d Cir. 1981).

21 U.S.—Founding Church of Scientology of Washington, D. C. v. U.S., 409 F.2d 1146, 13 A.L.R. Fed. 721 (D.C. Cir. 1969).

Disruptive "Church of the New Song" created by prisoner

U.S.—Theriault v. Silber, 453 F. Supp. 254 (W.D. Tex. 1978).

22 Ariz.—In re Marriage of Gove, 117 Ariz. 324, 572 P.2d 458 (Ct. App. Div. 1 1977).

23 Minn.—State v. Hershberger, 462 N.W.2d 393 (Minn. 1990).

24 U.S.—Masjid Muhammad-D. C. C. v. Keve, 479 F. Supp. 1311 (D. Del. 1979).

25 U.S.—Masjid Muhammad-D. C. C. v. Keve, 479 F. Supp. 1311 (D. Del. 1979).

26 U.S.—Childers v. Dallas Police Dept., 513 F. Supp. 134 (N.D. Tex. 1981), aff'd, 669 F.2d 732 (5th Cir. 1982).

27 § 868.

28 U.S.—Van Schaick v. Church of Scientology of California, Inc., 535 F. Supp. 1125 (D. Mass. 1982).

29 U.S.—Thomas v. Review Bd. of Indiana Employment Sec. Division, 450 U.S. 707, 101 S. Ct. 1425, 67 L. Ed. 2d 624 (1981); Van Schaick v. Church of Scientology of California, Inc., 535 F. Supp. 1125 (D. Mass. 1982).

30 U.S.—Thomas v. Review Bd. of Indiana Employment Sec. Division, 450 U.S. 707, 101 S. Ct. 1425, 67 L. Ed. 2d 624 (1981); Geller v. Secretary of Defense, 423 F. Supp. 16 (D.D.C. 1976).

31 Alaska—Frank v. State, 604 P.2d 1068 (Alaska 1979).

American Indian's long hair

U.S.—Teterud v. Burns, 522 F.2d 357 (8th Cir. 1975).

32 U.S.—International Soc. for Krishna Consciousness, Inc. v. New Jersey Sports and Exposition Authority, 532 F. Supp. 1088, 10 Fed. R. Evid. Serv. 472 (D.N.J. 1981), judgment aff'd, 691 F.2d 155 (3d Cir. 1982).

Wis.—State v. Yoder, 49 Wis. 2d 430, 182 N.W.2d 539 (1971), judgment aff'd, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972).

33 Iowa—Mitchell County v. Zimmerman, 810 N.W.2d 1 (Iowa 2012).

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16A C.J.S. Constitutional Law § 868

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Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

A. Introduction

3. Free Exercise of Religion

§ 868. Belief or practice must be sincerely held

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1302, 1305

To be protected under the Free Exercise Clause, a religious belief must be sincerely held.

To be protected under the Free Exercise Clause, a religious belief must be sincerely held,[1] as viewed in the context of the individual's life as he or she now lives it.[2] Thus, the sincerity of an avowed adherent of a particular religion may be judicially investigated.[3]

A sincere religious believer does not forfeit religious rights under the First Amendment merely because he or she is not scrupulous in his or her observance.[4]

CUMULATIVE SUPPLEMENT

Cases:

Under the Free Exercise Clause, a law targeting religious beliefs as such is never permissible. U.S.C.A. Const.Amend. 1. Trinity Lutheran Church of Columbia, Inc. v. Comer, 2017 WL 2722410 (U.S. 2017).

In the context of the requirement that a claimant's proffered belief must be sincerely held for a religious claim to merit protection under the free exercise clause, the First Amendment does not extend to so-called religions which are obviously shams and absurdities and whose members are patently devoid of religious sincerity. U.S. Const. Amend. 1. Paliotta v. State in Relation to Nevada Department of Corrections, 401 P.3d 1071 (Nev. 2017).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Hernandez v. C.I.R., 490 U.S. 680, 109 S. Ct. 2136, 104 L. Ed. 2d 766 (1989); GeorgiaCarry.Org, Inc. v. Georgia, 687 F.3d 1244 (11th Cir. 2012), cert. denied, 133 S. Ct. 856, 184 L. Ed. 2d 656 (2013).
Alaska—Frank v. State, 604 P.2d 1068 (Alaska 1979).
Me.—Bagley v. Raymond School Dept., 1999 ME 60, 728 A.2d 127, 134 Ed. Law Rep. 226 (Me. 1999).
N.J.—Valent v. New Jersey State Bd. of Educ., 114 N.J. Super. 63, 274 A.2d 832 (Ch. Div. 1971).
Wash.—City of Woodinville v. Northshore United Church of Christ, 166 Wash. 2d 633, 211 P.3d 406 (2009).
Wis.—State v. Miller, 202 Wis. 2d 56, 549 N.W.2d 235 (1996).

2 U.S.—Callahan v. Woods, 658 F.2d 679 (9th Cir. 1981).

3 U.S.—International Soc. For Krishna Consciousness, Inc. v. Barber, 650 F.2d 430 (2d Cir. 1981); Africa v. Com. of Pa., 662 F.2d 1025 (3d Cir. 1981).
Mich.—Braverman v. Granger, 303 Mich. App. 587, 844 N.W.2d 485 (2014), appeal denied, 496 Mich. 859, 847 N.W.2d 647 (2014) and cert. denied, 135 S. Ct. 715, 190 L. Ed. 2d 441 (2014).
N.J.—New Jersey State Bd. of Higher Educ. v. Board of Directors of Shelton College, 90 N.J. 470, 448 A.2d 988, 5 Ed. Law Rep. 1170 (1982).
Burden on party asserting free exercise violation
Me.—Anderson v. Town of Durham, 2006 ME 39, 895 A.2d 944, 207 Ed. Law Rep. 978 (Me. 2006).
Wash.—City of Woodinville v. Northshore United Church of Christ, 166 Wash. 2d 633, 211 P.3d 406 (2009).
Question of fact
Cal.—People v. Mullins, 50 Cal. App. 3d 61, 123 Cal. Rptr. 201 (1st Dist. 1975).
Mass.—Attorney General v. Bailey, 386 Mass. 367, 436 N.E.2d 139, 4 Ed. Law Rep. 834 (1982).

4 U.S.—Grayson v. Schuler, 666 F.3d 450 (7th Cir. 2012).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

A. Introduction

3. Free Exercise of Religion

§ 869. Coercion, pressure, or burden

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1303, 1306

An essential element of a claim of a violation of the free exercise of religion is some form of governmental coercion or pressure, or burden on the exercise of religion.

An essential element of a claim of a violation of the free exercise of religion is some form of governmental coercion[1] or pressure,[2] or burden on the exercise of religion,[3] as it operates against the particular individual claiming an infringement of his or her rights.[4] A plaintiff cannot bring suit under the Free Exercise Clause unless he or she can allege a direct governmental infringement on his or her religious beliefs or practices.[5] To show a coercive effect, the plaintiff must establish injury or penalty by adherence to the tenets of his or her religion or that the plaintiff's conduct in the course of exercising his or her beliefs has been unduly restricted.[6]

CUMULATIVE SUPPLEMENT

Cases:

The Free Exercise Clause guards against the government's imposition of special disabilities on the basis of religious views or religious status, but this is not to say that any application of a valid and neutral law of general applicability is necessarily constitutional under the Free Exercise Clause. U.S.C.A. Const.Amend. 1. Trinity Lutheran Church of Columbia, Inc. v. Comer, 2017 WL 2722410 (U.S. 2017).

A policy that expressly discriminates against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character imposes a penalty on the free exercise of religion that triggers the most exacting scrutiny. U.S.C.A. Const.Amend. 1. Trinity Lutheran Church of Columbia, Inc. v. Comer, 2017 WL 2722410 (U.S. 2017).

To condition the availability of benefits upon a recipient's willingness to surrender his religiously impelled status effectively penalizes the free exercise of his constitutional liberties. U.S.C.A. Const.Amend. 1. Trinity Lutheran Church of Columbia, Inc. v. Comer, 2017 WL 2722410 (U.S. 2017).

The Free Exercise Clause protects against indirect coercion or penalties on the free exercise of religion, not just outright prohibitions. U.S.C.A. Const.Amend. 1. Trinity Lutheran Church of Columbia, Inc. v. Comer, 2017 WL 2722410 (U.S. 2017).

Free Exercise of Religion under the First Amendment is impermissibly burdened when government action compels individuals to perform acts undeniably at odds with fundamental tenets of their religious beliefs. U.S. Const. Amend. 1. Real Alternatives, Inc. v. Secretary Department of Health and Human Services, 867 F.3d 338 (3d Cir. 2017).

Defendants place a substantial burden on a person's religious exercise, as element of claim for violation of rights secured by the First Amendment's Free Exercise Clause, when they put substantial pressure on an adherent to modify his behavior and to violate his beliefs. U.S. Const. Amend. 1. Wilcox v. Brown, 877 F.3d 161 (4th Cir. 2017).

County sheriff's office's actions in requiring Christian evangelists to leave city festival celebrating Arab culture after crowd made up predominantly of adolescents began hurling debris at them violated evangelists' rights under Free Exercise Clause, where evangelists' conduct was required by their sincerely-held religious beliefs, evangelists remained calm and peaceful, and officers made little effort to control hecklers, despite substantial police presence, but instead threatened to arrest evangelists for disorderly conduct. U.S.C.A. Const.Amend. 1. Bible Believers v. Wayne County, Mich., 805 F.3d 228 (6th Cir. 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Jones v. Butz, 374 F. Supp. 1284 (S.D. N.Y. 1974), judgment aff'd, 419 U.S. 806, 95 S. Ct. 22, 42 L. Ed. 2d 36 (1974); Sequoyah v. Tennessee Valley Authority, 480 F. Supp. 608 (E.D. Tenn. 1979), judgment aff'd, 620 F.2d 1159 (6th Cir. 1980).
N.D.—State v. Shaver, 294 N.W.2d 883 (N.D. 1980).

2 **Social pressure**
U.S.—Santa Fe Independent School Dist. v. Doe, 530 U.S. 290, 120 S. Ct. 2266, 147 L. Ed. 2d 295, 145 Ed. Law Rep. 21 (2000).
Denial or conditioning of government benefits
U.S.—Santa Fe Independent School Dist. v. Doe, 530 U.S. 290, 120 S. Ct. 2266, 147 L. Ed. 2d 295, 145 Ed. Law Rep. 21 (2000).

3 U.S.—Hernandez v. C.I.R., 490 U.S. 680, 109 S. Ct. 2136, 104 L. Ed. 2d 766 (1989).
Issue of law
Cal.—People v. Mullins, 50 Cal. App. 3d 61, 123 Cal. Rptr. 201 (1st Dist. 1975).

Mass.—Attorney General v. Bailey, 386 Mass. 367, 436 N.E.2d 139, 4 Ed. Law Rep. 834 (1982).

Possibility of criminal prosecution as direct burden

N.D.—State v. Shaver, 294 N.W.2d 883 (N.D. 1980).

4 U.S.—Board of Ed. of Central School Dist. No. 1 v. Allen, 392 U.S. 236, 88 S. Ct. 1923, 20 L. Ed. 2d 1060 (1968); Brandon v. Board of Ed. of Guilderland Central School Dist., 635 F.2d 971 (2d Cir. 1980).

5 U.S.—Malnak v. Yogi, 440 F. Supp. 1284 (D.N.J. 1977), judgment aff'd, 592 F.2d 197 (3d Cir. 1979).

6 U.S.—Crow v. Gullet, 541 F. Supp. 785 (D.S.D. 1982), judgment aff'd, 706 F.2d 856 (8th Cir. 1983).

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16A C.J.S. Constitutional Law § 870

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

A. Introduction

3. Free Exercise of Religion

§ 870. Regulation of private action by neutral or nonneutral legislation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1303, 1307

While the right of free exercise does not relieve an individual of the obligation to comply with a valid or neutral law of general applicability on the ground that the law proscribes, or requires, conduct which is contrary to his or her religious practice, if a law affecting religion is not neutral, the law is invalid unless justified by a compelling interest and narrowly tailored to advance that interest.

The free exercise of religion embraces two distinct concepts: the freedom to believe or worship and the freedom to act;[1] the freedom of belief must be distinguished from freedom to act.[2] While the right or freedom to hold religious beliefs and opinions, and to worship, is absolute,[3] the freedom to act or express religious beliefs is not absolute;[4] rather, it is limited and qualified[5] and remains subject to regulation or restriction.[6] Thus, although the State would be prohibiting the free exercise of religion in violation of the Free Exercise Clause if it sought to ban religious acts or abstentions only when they were engaged in for religious reasons, or only because of the religious belief which they displayed,[7] the right of free exercise does not relieve an individual of the obligation to comply with a valid or neutral law of general applicability on the ground that the law proscribes, or requires, conduct which is contrary to his or her religious practice[8] as long as the law does not violate other constitutional protections.[9]

Thus, a law which is neutral and of general applicability need not be justified by a compelling governmental interest even if it has the incidental effect of burdening a religious practice.[10]

On the other hand, if a law affecting religion is not neutral, that is, if the object of the law is to infringe upon or restrict practices because of their religious motivation,[11] the law is invalid unless justified by a compelling interest and narrowly tailored to advance that interest.[12] Under this analysis, a court must balance the restriction against the importance of the interest of the state in the governmental action or regulation.[13] In other words, the validity of governmental action may require a comparison of two burdens: the burden on the person who is seeking a government benefit of being denied the benefit as the price of observing his or her religion, and the burden on the government of extending the benefit to someone who fails to meet the usual requirements for eligibility.[14] In order for a state to restrict an individual's exercise of conduct under religious belief, a state must have a compelling interest, and a restrictive statute must have a "nexus of necessity" with the asserted state interest,[15] or must be justified by a state interest of sufficient magnitude to override the interest claiming protection,[16] and a showing of a mere rational relationship to some colorable state interest would not justify such infringements.[17] In other words, only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.[18] Notwithstanding the existence of a compelling state interest, the abrogation of the exercise of religion will not be justified unless the regulation is the least restrictive means to serve that compelling interest.[19] Even facially neutral legislation may give rise to a burden on religion if, as applied to a particular religious sect, it forces individuals to choose between abandoning religious beliefs or sacrificing an important government benefit.[20]

CUMULATIVE SUPPLEMENT

Cases:

Whether a law imposes substantial burden on a party's exercise of religious freedom, for purposes of determining whether the law violates the Religious Freedom Restoration Act (RFRA), is something that a court must decide, not something that a party may simply allege. Religious Freedom Restoration Act of 1993, § 2 et seq., 42 U.S.C.A. § 2000bb et seq. Michigan Catholic Conference and Catholic Family Services v. Burwell, 807 F.3d 738 (6th Cir. 2015).

In assessing neutrality and general applicability, for purposes of the principle that the Free Exercise Clause does not relieve individuals from the obligation to comply with a valid and neutral law of general applicability, which is rationally related to a legitimate government interest, courts evaluate both the text of the challenged law as well as the effect in its real operation. U.S. Const. Amend. 1. Parents for Privacy v. Barr, 949 F.3d 1210 (9th Cir. 2020).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—U.S. v. Grayson County State Bank, 656 F.2d 1070 (5th Cir. 1981).
Wash.—State v. Meacham, 93 Wash. 2d 735, 612 P.2d 795 (1980).

2 U.S.—U.S. v. Carroll, 567 F.2d 955 (10th Cir. 1977).

3 U.S.—Bowen v. Roy, 476 U.S. 693, 106 S. Ct. 2147, 90 L. Ed. 2d 735 (1986).
Ariz.—Matter of Appeal In Cochise County Juvenile Action No. 5666-J, 133 Ariz. 157, 650 P.2d 459 (1982).

4 U.S.—Cantwell v. State of Connecticut, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213, 128 A.L.R. 1352 (1940); University of Notre Dame v. Sebelius, 988 F. Supp. 2d 912, 306 Ed. Law Rep. 228 (N.D. Ind. 2013),

aff'd, 743 F.3d 547, 302 Ed. Law Rep. 39 (7th Cir. 2014), cert. granted, judgment vacated, 135 S. Ct. 1528 (2015); BK v. Toumpas, 909 F. Supp. 2d 60, 2012 DNH 192 (D.N.H. 2012).
Fla.—Bilbrey v. Myers, 91 So. 3d 887 (Fla. 5th DCA 2012).
Vt.—Turner v. Roman Catholic Diocese of Burlington, Vermont, 186 Vt. 396, 2009 VT 101, 987 A.2d 960 (2009).

5 U.S.—Biklen v. Board of Ed., City School Dist., Syracuse, N.Y., 333 F. Supp. 902 (N.D. N.Y. 1971), judgment aff'd, 406 U.S. 951, 92 S. Ct. 2060, 32 L. Ed. 2d 340 (1972).
Okla.—Lewellyn v. State, 1979 OK CR 24, 592 P.2d 538 (Okla. Crim. App. 1979).
Pa.—Morris v. Morris, 271 Pa. Super. 19, 412 A.2d 139 (1979).
Not a shield to be used to cover up criminal acts
N.Y.—Matter of Fuhrer, 100 Misc. 2d 315, 419 N.Y.S.2d 426 (Sup 1979).

6 U.S.—E.E.O.C. v. Pacific Press Pub. Ass'n, 676 F.2d 1272 (9th Cir. 1982).
Colo.—Young Life v. Division of Employment and Training, 650 P.2d 515 (Colo. 1982).
Haw.—State v. Armitage, 132 Haw. 36, 319 P.3d 1044 (2014).

7 U.S.—Employment Div., Dept. of Human Resources of Oregon v. Smith, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990).

8 U.S.—Employment Div., Dept. of Human Resources of Oregon v. Smith, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990).
Cal.—Catholic Charities of Sacramento, Inc. v. Superior Court, 32 Cal. 4th 527, 10 Cal. Rptr. 3d 283, 85 P.3d 67 (2004).
Miss.—Roman Catholic Diocese of Jackson v. Morrison, 905 So. 2d 1213 (Miss. 2005).
Neb.—Douglas County v. Anaya, 269 Neb. 552, 694 N.W.2d 601 (2005).

9 U.S.—Employment Div., Dept. of Human Resources of Oregon v. Smith, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990).

10 U.S.—Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993).
Tenn.—Christ Church Pentecostal v. Tennessee State Bd. of Equalization, 428 S.W.3d 800 (Tenn. Ct. App. 2013), appeal denied, (Aug. 27, 2013).

11 U.S.—Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993); Priests For Life v. U.S. Dept. of Health and Human Services, 772 F.3d 229 (D.C. Cir. 2014); School of the Ozarks, Inc. v. U.S. Dept. of Health and Human Services, 2015 WL 527671 (W.D. Mo. 2015).

12 U.S.—Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993).
Miss.—Mississippi High School Activities Ass'n, Inc. v. Coleman By and on Behalf of Laymon, 631 So. 2d 768, 89 Ed. Law Rep. 692 (Miss. 1994).

13 U.S.—Crow v. Gullet, 541 F. Supp. 785 (D.S.D. 1982), judgment aff'd, 706 F.2d 856 (8th Cir. 1983).
Kan.—State ex rel. O'Sullivan v. Heart Ministries, Inc., 227 Kan. 244, 607 P.2d 1102 (1980).
N.Y.—M. I. v. A. I., 107 Misc. 2d 663, 435 N.Y.S.2d 928 (Fam. Ct. 1981).

14 Ill.—Menora v. Illinois High School Ass'n, 683 F.2d 1030 (7th Cir. 1982).
Direct and indirect burdens
N.D.—State v. Shaver, 294 N.W.2d 883 (N.D. 1980).
Severity of burden
U.S.—Valencia v. Blue Hen Conference, 476 F. Supp. 809 (D. Del. 1979), aff'd, 615 F.2d 1355 (3d Cir. 1980).

15 Wash.—State v. Meacham, 93 Wash. 2d 735, 612 P.2d 795 (1980).

16 U.S.—Espinosa v. Rusk, 634 F.2d 477 (10th Cir. 1980), judgment aff'd, 456 U.S. 951, 102 S. Ct. 2025, 72 L. Ed. 2d 477 (1982).
Md.—Thomas v. Allegany County Bd. of Ed., 51 Md. App. 312, 443 A.2d 622, 3 Ed. Law Rep. 670 (1982).
Ohio—State ex rel. Nagle v. Olin, 64 Ohio St. 2d 341, 18 Ohio Op. 3d 503, 415 N.E.2d 279 (1980).
Defense in criminal prosecution
N.M.—State v. Brashear, 92 N.M. 622, 1979-NMCA-027, 593 P.2d 63 (Ct. App. 1979).

17 U.S.—Sherbert v. Verner, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963).

18 U.S.—Thomas v. Review Bd. of Indiana Employment Sec. Division, 450 U.S. 707, 101 S. Ct. 1425, 67 L. Ed. 2d 624 (1981).
Mich.—Fisher v. Fisher, 118 Mich. App. 227, 324 N.W.2d 582 (1982).

19 U.S.—Thomas v. Review Bd. of Indiana Employment Sec. Division, 450 U.S. 707, 101 S. Ct. 1425, 67 L. Ed. 2d 624 (1981); Espinosa v. Rusk, 634 F.2d 477 (10th Cir. 1980), judgment aff'd, 456 U.S. 951, 102 S. Ct. 2025, 72 L. Ed. 2d 477 (1982).
Mich.—Fisher v. Fisher, 118 Mich. App. 227, 324 N.W.2d 582 (1982).

20 U.S.—Sherbert v. Verner, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963).
N.J.—New Jersey State Bd. of Higher Educ. v. Board of Directors of Shelton College, 90 N.J. 470, 448 A.2d 988, 5 Ed. Law Rep. 1170 (1982).

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16A C.J.S. Constitutional Law IV X B Refs.

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

Topic Summary | Correlation Table

Research References

A.L.R. Library

A.L.R. Index, Civil Rights and Discrimination
A.L.R. Index, Constitutional Law
A.L.R. Index, Freedom of Religion
A.L.R. Index, Separation of Church and State
West's A.L.R. Digest, Constitutional Law 84.5, 274(4), 1310, 1311, 1314 to 1318, 1320 to 1326, 1328 to 1340, 1342 to 1361, 1363 to 1369, 1371, 1372, 1374 to 1383, 1385 to 1393, 1395 to 1399, 1401 to 1403, 1405 to 1412, 1414 to 1420, 1422 to 1428, 2164, 2176, 4209(1) to 4209(3), 4224(6)

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16A C.J.S. Constitutional Law § 871

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

1. Education

a. In General

§ 871. Education as affected by constitutional guaranties of religious liberty and freedom of conscience, generally

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West's Key Number Digest

West's Key Number Digest, Constitutional Law 1342 to 1361, 1363 to 1369, 2164, 2176, 4209(1) to 4209(3), 4224(6)

The State may make reasonable rules and regulations affecting public schools without violating the constitutional guaranties of religious liberty and freedom of conscience.

The State may make reasonable rules and regulations relating to education, such as those affecting public schools, without violating the constitutional guaranties of religious liberty and freedom of conscience.[1] However, state laws relating to education may be subject to strict scrutiny where they are alleged to violate parents' constitutional right to direct the education and upbringing of their children.[2] The power of a parent to educate a child, even when linked to a claim of the violation of the Free Exercise Clause, may be subject to limitation if it appears that parental decisions will jeopardize the health or safety of the child or have a potential for significant social burdens.[3] Accordingly, the State may safeguard the health of public school children.[4] However, the power of the State to regulate the education process is not totally free from a balancing process when it impinges on fundamental rights and interests protected by the Free Exercise Clause.[5] Religious schools are guaranteed freedom from

governmental intrusion.[6] Furthermore, a school activity, the primary purpose of which is secular, is not made unconstitutional by the inclusion of some religious content.[7] Likewise, the opening of an elementary school which is open to any student and has a curriculum conforming to that of other district schools is not unconstitutional even though the school is primarily attended by students belonging to a particular religious group.[8]

The courts have upheld the regulation of interscholastic high school activities as against contentions of violations of the First Amendment.[9]

School districts.

A state violates the Establishment Clause of the First Amendment by passing a statute creating a special school district for a town with boundaries drawn to include only property owned and inhabited by practitioners of a strict form of a particular religion. The anomalously, case-specific nature of the legislature's exercise of state authority in creating such a special school district for a particular religious community provides no assurance that the next similarly situated group will receive one, as required to satisfy the requirement of the establishment clause that government should not prefer one religion over another, or religion to irreligion.[10]

Employment relations.

State constitutional provisions establishing a right to unionize and engage in collective bargaining may be applied to a religious school but only to the extent they do not violate the First Amendment.[11]

An agreement by a school board to grant paid leaves of absence to teachers for religious purposes violates the Establishment Clause.[12]

Condom availability.

A school district's program of condom availability in junior and senior high schools does not violate the rights of students and parents to the free exercise of religion.[13]

Footnotes

1 N.H.—State v. Drew, 89 N.H. 54, 192 A. 629 (1937).
Utah—Gubler v. Utah State Teachers' Retirement Bd., 113 Utah 188, 192 P.2d 580, 2 A.L.R.2d 1022 (1948).

2 **Assessment exam as violating parental rights**
Ky.—Triplett v. Livingston County Bd. of Educ., 967 S.W.2d 25, 126 Ed. Law Rep. 528 (Ky. Ct. App. 1997).

3 U.S.—Wisconsin v. Yoder, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972); Davis v. Page, 385 F. Supp. 395 (D.N.H. 1974).
Wis.—State v. Kasuboski, 87 Wis. 2d 407, 275 N.W.2d 101 (Ct. App. 1978).

4 Ind.—Vonnegut v. Baun, 206 Ind. 172, 188 N.E. 677 (1934).
Physical examination
S.D.—Streich v. Board of Education of Independent School Dist. of City of Aberdeen, 34 S.D. 169, 147 N.W. 779 (1914).

5 Wis.—State v. Kasuboski, 87 Wis. 2d 407, 275 N.W.2d 101 (Ct. App. 1978).

6 **Compelled production of financial records**
U.S.—Surinach v. Pesquera De Busquets, 604 F.2d 73 (1st Cir. 1979).

State constitution

Minn.—Hill-Murray Federation of Teachers, St. Paul, Minn. v. Hill-Murray High School, Maplewood, Minn., 487 N.W.2d 857, 76 Ed. Law Rep. 864 (Minn. 1992).

7 U.S.—Florey v. Sioux Falls School Dist. 49-5, 619 F.2d 1311 (8th Cir. 1980).

8 U.S.—Stark v. Independent School Dist., No. 640, 123 F.3d 1068, 121 Ed. Law Rep. 41 (8th Cir. 1997).

9 **Exclusion of sectarian schools**

U.S.—Windsor Park Baptist Church v. Arkansas Activities Ass'n, 658 F.2d 618 (8th Cir. 1981); Valencia v. Blue Hen Conference, 476 F. Supp. 809 (D. Del. 1979), aff'd, 615 F.2d 1355 (3d Cir. 1980).

Transfer rules

La.—Chabert v. Louisiana High School Athletic Ass'n, 323 So. 2d 774 (La. 1975).

Or.—Cooper v. Oregon School Activities Ass'n, 52 Or. App. 425, 629 P.2d 386, 15 A.L.R.4th 869 (1981).

Wearing of religiously required headgear

U.S.—Menora v. Illinois High School Ass'n, 683 F.2d 1030 (7th Cir. 1982).

10 U.S.—Board of Educ. of Kiryas Joel Village School Dist. v. Grumet, 512 U.S. 687, 114 S. Ct. 2481, 129 L. Ed. 2d 546, 91 Ed. Law Rep. 810 (1994).

11 **Lay teachers at Catholic school**

N.J.—South Jersey Catholic School Teachers Organization v. St. Teresa of the Infant Jesus Church Elementary School, 150 N.J. 575, 696 A.2d 709, 119 Ed. Law Rep. 1035 (1997).

For a general discussion of employment matters, see §§ 889 to 892.

12 N.J.—Hunterdon Central High School Bd. of Ed. v. Hunterdon Central High School Teachers' Ass'n, 174 N.J. Super. 468, 416 A.2d 980 (App. Div. 1980), judgment aff'd, 86 N.J. 43, 429 A.2d 354 (1981).

13 Mass.—Curtis v. School Committee of Falmouth, 420 Mass. 749, 652 N.E.2d 580, 101 Ed. Law Rep. 1047, 52 A.L.R.5th 887 (1995).

N.Y.—Alfonso v. Fernandez, 195 A.D.2d 46, 606 N.Y.S.2d 259, 88 Ed. Law Rep. 747 (2d Dep't 1993).

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16A C.J.S. Constitutional Law § 872

Corpus Juris Secundum | June 2021 Update

Constitutional Law
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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

1. Education

a. In General

§ 872. Attendance

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1342, 1363

A state may require school attendance irrespective of religious objections, but high school attendance may not be required where religious liberty, interrelated with a way of life, would be infringed.

A state may require school attendance as against a claim of religious liberty.[1] However, the guaranty of the right to the free exercise of religion protects the right of a parent to send a child to a parochial school instead of to a public school,[2] and so, a state may not require attendance at public schools as opposed to a private sectarian education.[3] Furthermore, in view of the guaranty of religious liberty, a state may not require that children, whose parents object to public education, attend privately owned schools subject to state imposed minimum standards which go further than is necessary to assure its legitimate interests in the education of children[4] and which are so comprehensive in scope and effect as to eradicate the distinction between public and church related education.[5] Furthermore, while a requirement of compulsory elementary school attendance does not interfere with religious liberty, particularly where secular education does not conflict with or endanger religious values or beliefs with which children are concerned,[6] a state requirement of school attendance past the eighth grade infringes on the free exercise

of religion where it is shown that compulsory school attendance violates sincerely held religious beliefs, which is intertwined with a way of life,[7] and this is particularly true where a religious group provides an alternative mode of continuing vocational education.[8]

Excusing pupils to attend religious instruction.

Without violating religious liberties, a statute or regulation may excuse pupils from attendance in order to participate in religious exercises or observances or to receive moral and religious instruction or education, at places other than public school buildings or grounds,[9] as where the program involves neither religious instruction in public school classrooms nor the expenditure of public funds,[10] other than the minor expenses entailed in reporting student attendance at such program,[11] but where the classroom is turned over to religious instructors, such program is invalid.[12] To be constitutional, such a program must be implemented without excessive entanglement between public schools and religious institutions,[13] and the least entangling administrative alternatives must be chosen.[14] While a public school may grant credit to students for the time spent in a religious instruction program to satisfy state daily attendance requirements, eligibility for state financial aid, and student eligibility for extracurricular activities, it may not grant graduation credit for courses designated as not mainly denominational.[15] Furthermore, where a public school's released time program permits students to leave public school in order to attend private religious instruction and students receive grades for such instruction which affect the students' grade point average, which will be used as a qualification for other educational opportunities, the program violates the Establishment Clause.[16]

Religious holidays.

The failure of the public school authorities to permit sufficient absences for the observance of religious holidays by teachers[17] and students[18] may constitute an infringement of religious liberty.

Footnotes

1 U.S.—Prince v. Massachusetts, 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944).
Reporting requirement for religious school
Mass.—Attorney General v. Bailey, 386 Mass. 367, 436 N.E.2d 139, 4 Ed. Law Rep. 834 (1982).

2 U.S.—Moss v. Spartanburg County School Dist. Seven, 683 F.3d 599, 281 Ed. Law Rep. 791 (4th Cir. 2012); Valencia v. Blue Hen Conference, 476 F. Supp. 809 (D. Del. 1979), aff'd, 615 F.2d 1355 (3d Cir. 1980).
Or.—Cooper v. Oregon School Activities Ass'n, 52 Or. App. 425, 629 P.2d 386, 15 A.L.R.4th 869 (1981).
Pa.—Springfield School Dist., Delaware County v. Department of Ed., 483 Pa. 539, 397 A.2d 1154 (1979).

3 U.S.—Committee For Public Ed. and Religious Liberty v. Nyquist, 413 U.S. 756, 93 S. Ct. 2955, 37 L. Ed. 2d 948 (1973); Lanner v. Wimmer, 662 F.2d 1349, 1 Ed. Law Rep. 138 (10th Cir. 1981).
Me.—Blount v. Department of Educational and Cultural Services, 551 A.2d 1377, 51 Ed. Law Rep. 167 (Me. 1988).

4 Ohio—State ex rel. Nagle v. Olin, 64 Ohio St. 2d 341, 18 Ohio Op. 3d 503, 415 N.E.2d 279 (1980).

5 Ohio—State v. Whisner, 47 Ohio St. 2d 181, 1 Ohio Op. 3d 105, 351 N.E.2d 750 (1976).

6 Ala.—Jernigan v. State, 412 So. 2d 1242 (Ala. Crim. App. 1982).
Requirement of state approved school
N.D.—State v. Shaver, 294 N.W.2d 883 (N.D. 1980).

7 U.S.—Wisconsin v. Yoder, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972).
Iowa—State v. Moorhead, 308 N.W.2d 60 (Iowa 1981).
Ideological or philosophical beliefs insufficient
Wis.—State v. Kasuboski, 87 Wis. 2d 407, 275 N.W.2d 101 (Ct. App. 1978).

Indian heritage

N.C.—Matter of McMillan, 30 N.C. App. 235, 226 S.E.2d 693 (1976).

8 U.S.—Wisconsin v. Yoder, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972).

9 U.S.—Zorach v. Clauson, 343 U.S. 306, 72 S. Ct. 679, 96 L. Ed. 954 (1952); Lanner v. Wimmer, 662 F.2d 1349, 1 Ed. Law Rep. 138 (10th Cir. 1981).

Wis.—State ex rel. Holt v. Thompson, 66 Wis. 2d 659, 225 N.W.2d 678 (1975).

10 U.S.—Zorach v. Clauson, 343 U.S. 306, 72 S. Ct. 679, 96 L. Ed. 954 (1952).

11 Wis.—State ex rel. Holt v. Thompson, 66 Wis. 2d 659, 225 N.W.2d 678 (1975).

12 U.S.—People of State of Ill. ex rel. McCollum v. Board of Ed. of School Dist. No. 71, Champaign County, Ill., 333 U.S. 203, 68 S. Ct. 461, 92 L. Ed. 649, 2 A.L.R.2d 1338 (1948).

13 **Application of secular standards constitutional**

U.S.—Lanner v. Wimmer, 662 F.2d 1349, 1 Ed. Law Rep. 138 (10th Cir. 1981).

14 **Attendance reports**

U.S.—Lanner v. Wimmer, 662 F.2d 1349, 1 Ed. Law Rep. 138 (10th Cir. 1981).

15 **Monitoring of course content unconstitutional**

U.S.—Lanner v. Wimmer, 662 F.2d 1349, 1 Ed. Law Rep. 138 (10th Cir. 1981).

16 U.S.—Moss v. Spartanburg County School Dist. No. 7, 676 F. Supp. 2d 452, 254 Ed. Law Rep. 191 (D.S.C. 2009).

17 **Unpaid leave approved**

Cal.—Rankins v. Commission On Professional Competence, 24 Cal. 3d 167, 154 Cal. Rptr. 907, 593 P.2d 852 (1979).

18 U.S.—Church of God (Worldwide, Texas Region) v. Amarillo Independent School Dist., 511 F. Supp. 613 (N.D. Tex. 1981), judgment aff'd, 670 F.2d 46 (5th Cir. 1982).

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16A C.J.S. Constitutional Law § 873

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

1. Education

a. In General

§ 873. Attendance—Home schooling

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1361

A state may provide for the schooling of children at home, and the setting of minimum standards of instruction does not, on its face, violate the free exercise rights of families who wish to give their children a religious education at home.

Parents do not have absolute right under the First Amendment's Free Exercise Clause to home school their children free of any state supervision, regulation, or requirements.[1] A state may provide for the schooling of children at home, and the setting of minimum standards of instruction does not, on its face, violate the free exercise rights of families who wish to give their children a religious education at home.[2] A state may require that parents seek approval of the local superintendent for their home education program in order to obtain excuse from compulsory attendance laws.[3] In addition, a state may require that home school students take a standardized test despite their parent's religious belief that they had to be completely responsible for every aspect of their children's education.[4] Laws requiring that home schooled students be taught by certified teachers have been both upheld[5] and struck down as unconstitutional.[6]

Footnotes

1 Tex.—El Paso Independent School Dist. v. McIntyre, 2014 WL 3851313 (Tex. App. El Paso 2014).

2 U.S.—Blackwelder v. Safnauer, 689 F. Supp. 106, 48 Ed. Law Rep. 418 (N.D. N.Y. 1988).

Filing of home schooling report

Iowa—State v. Rivera, 497 N.W.2d 878, 81 Ed. Law Rep. 1064 (Iowa 1993).

3 Ohio—State v. Schmidt, 29 Ohio St. 3d 32, 505 N.E.2d 627, 38 Ed. Law Rep. 1137 (1987).

4 U.S.—Murphy v. State of Ark., 852 F.2d 1039, 48 Ed. Law Rep. 159 (8th Cir. 1988).

5 **Least restrictive alternative**

N.D.—State v. Anderson, 427 N.W.2d 316, 48 Ed. Law Rep. 649 (N.D. 1988).

6 **Requirement unconstitutional as applied**

Mich.—People v. DeJonge, 442 Mich. 266, 501 N.W.2d 127, 83 Ed. Law Rep. 773 (1993).

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16A C.J.S. Constitutional Law § 874

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

1. Education

a. In General

§ 874. Curriculum

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1354(1), 1354(3)

In view of the First Amendment guaranty of religious freedom, a public school curriculum may not be tailored to a religious dogma. The Bible may not be taught in public schools in a manner that advances religion in violation of the Establishment Clause.

While the Free Exercise Clause does not prohibit a local school committee from enforcing a state law which requires the approval of a religious school's secular education program,[1] a state is required to plan its school curriculum on the basis of educational rather than religious considerations,[2] and, in view of First Amendment restrictions, teaching in public schools may not be tailored to the principles and prohibitions of any religious sect or dogma.[3] While the First Amendment does not stand as a guarantee that a school curriculum will offend no religious group,[4] the State may not adopt programs or practices in public schools which aid or oppose any religion.[5] Furthermore, the fact that a course of instruction sponsored or permitted within a public school is nonsectarian, nondoctrinal, nondenominational, or otherwise religiously neutral does not prevent its being held to be in violation of the Establishment Clause if in fact it is a course in religious instruction.[6] The principle of separation of

church and state is violated where tax-supported school buildings are used for the dissemination of religious doctrines and a compulsory education system helps to provide pupils for religious classes of sectarian groups.[7]

Bible study.

The study of the Bible in public schools for its literary and historic qualities as part of a secular program of education may be effected consistent with the First Amendment[8] and state constitutional provisions respecting religion,[9] but it may not be taught in a manner that advances religion in violation of the Establishment Clause.[10]

A public school teacher's religiously motivated display of a personal Bible on his or her desk does not violate the Establishment Clause where the teacher does not use the Bible while teaching.[11]

Reserve officer training.

The completion of a reserve officers training corps program may not be required as a prerequisite to graduation where a student objects to it on religious grounds, without offending the guaranty of religious liberty, although it may be required of a student who objects to it due to a repugnance to killing rather than on a basis of a religious belief.[12]

Teachers' actions.

Teachers may not, on the basis of religious beliefs, disregard a prescribed curriculum[13] concerning patriotic matters,[14] or refuse to participate in holiday activities.[15]

Footnotes

1 U.S.—New Life Baptist Church Academy v. Town of East Longmeadow, 885 F.2d 940, 56 Ed. Law Rep. 82 (1st Cir. 1989).

2 U.S.—Malnak v. Yogi, 440 F. Supp. 1284 (D.N.J. 1977), judgment aff'd, 592 F.2d 197 (3d Cir. 1979).
Cal.—Citizens for Parental Rights v. San Mateo County Bd. of Education, 51 Cal. App. 3d 1, 124 Cal. Rptr. 68, 82 A.L.R.3d 544 (1st Dist. 1975).

3 U.S.—Epperson v. State of Ark., 393 U.S. 97, 89 S. Ct. 266, 21 L. Ed. 2d 228 (1968); Daniel v. Waters, 515 F.2d 485 (6th Cir. 1975); Malnak v. Yogi, 440 F. Supp. 1284 (D.N.J. 1977), judgment aff'd, 592 F.2d 197 (3d Cir. 1979).

4 N.Y.—Ware v. Valley Stream High School Dist., 75 N.Y.2d 114, 551 N.Y.S.2d 167, 550 N.E.2d 420, 58 Ed. Law Rep. 1242 (1989).

5 U.S.—Epperson v. State of Ark., 393 U.S. 97, 89 S. Ct. 266, 21 L. Ed. 2d 228 (1968); Daniel v. Waters, 515 F.2d 485 (6th Cir. 1975); Williams v. Board of Ed. of Kanawha County, 388 F. Supp. 93 (S.D. W. Va. 1975), aff'd, 530 F.2d 972 (4th Cir. 1975).
N.Y.—Ware v. Valley Stream High School Dist., 75 N.Y.2d 114, 551 N.Y.S.2d 167, 550 N.E.2d 420, 58 Ed. Law Rep. 1242 (1989).
Ancillary religious matter in literature course
Mich.—Todd v. Rochester Community Schools, 41 Mich. App. 320, 200 N.W.2d 90 (1972).
Punishment for religious beliefs
The First Amendment does not permit educators to invoke curriculum as a pretext for punishing a student for his or her religion.
U.S.—Ward v. Polite, 667 F.3d 727, 276 Ed. Law Rep. 593 (6th Cir. 2012).

6 U.S.—Wiley v. Franklin, 468 F. Supp. 133 (E.D. Tenn. 1979).

7 U.S.—People of State of Ill. ex rel. McCollum v. Board of Ed. of School Dist. No. 71, Champaign County, Ill., 333 U.S. 203, 68 S. Ct. 461, 92 L. Ed. 649, 2 A.L.R.2d 1338 (1948).

8 U.S.—School Dist. of Abington Tp., Pa. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963); Wiley v. Franklin, 474 F. Supp. 525 (E.D. Tenn. 1979).
N.J.—State Bd. of Ed. v. Board of Ed. of Netcong, 108 N.J. Super. 564, 262 A.2d 21 (Ch. Div. 1970), aff'd, 57 N.J. 172, 270 A.2d 412 (1970).

9 Wash.—Calvary Bible Presbyterian Church of Seattle v. Board of Regents of University of Wash., 72 Wash. 2d 912, 436 P.2d 189 (1967).

10 U.S.—Hall v. Board of School Com'rs of Conecuh County, 656 F.2d 999 (5th Cir. 1981); Wiley v. Franklin, 468 F. Supp. 133 (E.D. Tenn. 1979).

11 Ohio—Freshwater v. Mt. Vernon City School Dist. Bd. of Edn., 137 Ohio St. 3d 469, 2013-Ohio-5000, 1 N.E.3d 335, 300 Ed. Law Rep. 452 (2013), petition for certiorari filed, 135 S. Ct. 60, 190 L. Ed. 2d 33 (2014).

12 U.S.—Sapp v. Renfroe, 372 F. Supp. 1193 (N.D. Ga. 1974), judgment aff'd, 511 F.2d 172 (5th Cir. 1975).

13 U.S.—Palmer v. Board of Ed. of City of Chicago, 603 F.2d 1271 (7th Cir. 1979).

14 U.S.—Palmer v. Board of Ed. of City of Chicago, 603 F.2d 1271 (7th Cir. 1979).

15 U.S.—Palmer v. Board of Ed. of City of Chicago, 466 F. Supp. 600 (N.D. Ill. 1979), judgment aff'd, 603 F.2d 1271 (7th Cir. 1979).

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16A C.J.S. Constitutional Law § 875

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

1. Education

a. In General

§ 875. Curriculum—Creationism and evolution

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1354(2)

The right of the State to prescribe a public school curriculum does not entitle it to prohibit the teaching of a scientific theory or doctrine for reasons that violate religious freedom.

The right of the State to prescribe a public school curriculum does not entitle it to prohibit the teaching of a scientific theory or doctrine for reasons that violate religious freedom.[1] Thus, a statute forbidding the teaching of evolution in public schools or publicly supported institutions of higher education,[2] or which prohibits the use of a textbook unless it meets certain requirements regarding the teaching of the origin and creation of man,[3] infringes religious liberty. Furthermore, a requirement that creation science and the biblical version of creation be given a balanced treatment violates the Establishment Clause.[4] However, teaching creationism is not prohibited in public schools as long as it is done with the clear secular intent of enhancing the effectiveness of science instruction.[5]

Footnotes

1 U.S.—Epperson v. State of Ark., 393 U.S. 97, 89 S. Ct. 266, 21 L. Ed. 2d 228 (1968).

2 U.S.—Epperson v. State of Ark., 393 U.S. 97, 89 S. Ct. 266, 21 L. Ed. 2d 228 (1968).
Miss.—Smith v. State, 242 So. 2d 692 (Miss. 1970).

3 U.S.—Daniel v. Waters, 515 F.2d 485 (6th Cir. 1975).
Tenn.—Steele v. Waters, 527 S.W.2d 72 (Tenn. 1975).
"Balanced treatment"
U.S.—Edwards v. Aguillard, 482 U.S. 578, 107 S. Ct. 2573, 96 L. Ed. 2d 510, 39 Ed. Law Rep. 958 (1987).

4 U.S.—McLean v. Arkansas Bd. of Ed., 529 F. Supp. 1255, 2 Ed. Law Rep. 685 (E.D. Ark. 1982).

5 Ohio—Freshwater v. Mt. Vernon City School Dist. Bd. of Edn., 137 Ohio St. 3d 469, 2013-Ohio-5000, 1 N.E.3d 335, 300 Ed. Law Rep. 452 (2013), petition for certiorari filed, 135 S. Ct. 60, 190 L. Ed. 2d 33 (2014).

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16A C.J.S. Constitutional Law § 876

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Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

1. Education

a. In General

§ 876. Curriculum—Health or sex education and physical education

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1354(1), 1354(4)

Health education, including sex education, may be offered in public schools in the absence of any infringement on the free exercise of religion. A coeducational physical education requirement may infringe on the free exercise of religion.

Health education, including sex education, may be offered in public schools in the absence of any infringement on the free exercise of religion,[1] particularly where attendance at courses offering such education may be excused on the basis of religious objections.[2] The State may promulgate a regulation requiring local school districts to develop and implement a family-life education program in public schools,[3] or forbid the teaching of birth control,[4] without violating the Establishment Clause.

Physical education.

A coeducational physical education requirement may infringe on the free exercise of religion.[5]

Footnotes

1 Cal.—Citizens for Parental Rights v. San Mateo County Bd. of Education, 51 Cal. App. 3d 1, 124 Cal. Rptr. 68, 82 A.L.R.3d 544 (1st Dist. 1975).
Conn.—Hopkins v. Hamden Bd. of Ed., 29 Conn. Supp. 397, 289 A.2d 914 (C.P. 1971).
U.S.—Davis v. Page, 385 F. Supp. 395 (D.N.H. 1974).

2 Cal.—Citizens for Parental Rights v. San Mateo County Bd. of Education, 51 Cal. App. 3d 1, 124 Cal. Rptr. 68, 82 A.L.R.3d 544 (1st Dist. 1975).
Haw.—Medeiros v. Kiyosaki, 52 Haw. 436, 478 P.2d 314 (1970).
N.J.—Smith v. Ricci, 89 N.J. 514, 446 A.2d 501, 4 Ed. Law Rep. 1174 (1982).

3 N.J.—Smith v. Ricci, 89 N.J. 514, 446 A.2d 501, 4 Ed. Law Rep. 1174 (1982).

4 U.S.—Mercer v. Michigan State Bd. of Ed., 379 F. Supp. 580 (E.D. Mich. 1974), judgment aff'd, 419 U.S. 1081, 95 S. Ct. 673, 42 L. Ed. 2d 678 (1974).

5 **Immodest apparel**
U.S.—Moody v. Cronin, 484 F. Supp. 270 (C.D. Ill. 1979).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

1. Education

a. In General

§ 877. Library books and other literature; displays

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1342, 1346, 1365

Under certain circumstances, public school libraries may include Bibles and other religiously oriented books. While some displays with religious elements may be constitutionally permissible, the display of a portrait of Jesus Christ in a public school hallway violates the Establishment Clause.

Public school libraries may include Bibles and other religiously oriented books provided that no one sect is favored in the library and their inclusion in the library's collection does not show any preference for religious works in general.[1] However, religious books which were written to provide children with a better understanding of the Christian interpretation of the Bible and which are located in a classroom library may be violative of the Establishment Clause.[2]

A school district does not violate the Establishment Clause by allowing the Boy Scouts of America to distribute its literature during school hours and to hang its posters on the grounds of an elementary school.[3] Furthermore, a school district policy requiring classrooms to maintain calendars depicting a large variety of national, ethnic, and religious holidays, and permitting

seasonal displays containing religious symbols is constitutional.[4] On the other hand, the display of a portrait of Jesus Christ in a public school hallway violates the Establishment Clause[5] as does a Christian prayer mural affixed to the wall of a public high school's auditorium.[6]

CUMULATIVE SUPPLEMENT

Cases:

Students lacked standing under direct exposure theory to bring a claim alleging that school district and school board members promoted Hasidic Jewish faith in violation of First Amendment's Establishment Clause by systematically funding Hasidic schools with public monies through manipulation of IDEA settlement process and by buying religious books with public money and loaning books to Hasidic schools; students alleged that they were deprived of educational services because public funds that otherwise would have been available to them were diverted to an unconstitutional purpose, not that they were subjected to a religiously infused law that prohibited them from learning or confronted by a government-sponsored religious message. U.S. Const. Amend. 1; Individuals with Disabilities Education Act, § 601 et seq., 20 U.S.C.A. § 1400 et seq. Montesa v. Schwartz, 836 F.3d 176 (2d Cir. 2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Roberts v. Madigan, 702 F. Supp. 1505, 51 Ed. Law Rep. 501 (D. Colo. 1989), judgment aff'd, 921 F.2d 1047, 64 Ed. Law Rep. 1038, 19 Fed. R. Serv. 3d 530 (10th Cir. 1990).

2 U.S.—Roberts v. Madigan, 702 F. Supp. 1505, 51 Ed. Law Rep. 501 (D. Colo. 1989), judgment aff'd, 921 F.2d 1047, 64 Ed. Law Rep. 1038, 19 Fed. R. Serv. 3d 530 (10th Cir. 1990).

3 **Religious message**
U.S.—Sherman v. Community Consol. School Dist. 21 of Wheeling Tp., 8 F.3d 1160, 87 Ed. Law Rep. 57 (7th Cir. 1993).

4 U.S.—Clever v. Cherry Hill Tp. Bd. of Educ., 838 F. Supp. 929, 87 Ed. Law Rep. 848 (D.N.J. 1993).

5 U.S.—Washegesic v. Bloomingdale Public Schools, 33 F.3d 679, 94 Ed. Law Rep. 32, 1994 FED App. 0310P (6th Cir. 1994).
A.L.R. Library
State Constitutional Challenges to the Display of Religious Symbols on Public Property, 26 A.L.R.6th 145.
First Amendment Challenges to Display of Religious Symbols on Public Property, 107 A.L.R.5th 1.

6 U.S.—Ahlquist v. City of Cranston ex rel. Strom, 840 F. Supp. 2d 507, 281 Ed. Law Rep. 831 (D.R.I. 2012).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

1. Education

a. In General

§ 878. Immunization

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1356

A requirement that parents have school children immunized in compliance with school attendance prerequisites does not interfere with freedom of worship and does not constitute an establishment of religion.

A statute requiring parents to have school children immunized in compliance with school attendance prerequisites does not interfere with freedom of worship[1] and does not constitute an establishment of religion.[2] While the State need not provide a religious exemption for its program of immunization of school children, when it does so, the exemption must not run afoul of the Establishment Clause of the First Amendment.[3] Statutory exemptions for children whose parents or guardians are bona fide members of a recognized religious organization opposed to immunization have been upheld as against contentions that they interfere with the free exercise of religion,[4] or establish religion,[5] but there is authority to the effect that such a statute violates the Establishment Clause.[6] Furthermore, statutory exemptions for children who are bona fide members of a recognized religious organization have also been held to violate the free exercise of religion clause.[7] In the absence of circumstances demonstrating

a clear and present danger of a particular communicable disease, the exemption can be extended to children whose parents or guardians sincerely object to immunization on religious grounds.[8]

CUMULATIVE SUPPLEMENT

Cases:

When a parent seeks to assert a religious objection to immunization of a child, he or she must prove, by a preponderance of the evidence, that his or her opposition to immunization stems from genuinely-held religious beliefs. McKinney's Public Health Law § 2164(9). In re Baby Girl Z., 140 A.D.3d 893, 35 N.Y.S.3d 129 (2d Dep't 2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Phillips v. City of New York, 775 F.3d 538, 313 Ed. Law Rep. 452 (2d Cir. 2015).
Ky.—Mosier v. Barren County Bd. of Health, 308 Ky. 829, 215 S.W.2d 967 (1948).
N.H.—State v. Drew, 89 N.H. 54, 192 A. 629 (1937).
N.Y.—Matter of Gregory S, 85 Misc. 2d 846, 380 N.Y.S.2d 620 (Fam. Ct. 1976).
Polio
N.Y.—McCartney v. Austin, 57 Misc. 2d 525, 293 N.Y.S.2d 188 (Sup 1968), judgment aff'd, 31 A.D.2d 370, 298 N.Y.S.2d 26 (3d Dep't 1969).

2 N.Y.—McCartney v. Austin, 57 Misc. 2d 525, 293 N.Y.S.2d 188 (Sup 1968), judgment aff'd, 31 A.D.2d 370, 298 N.Y.S.2d 26 (3d Dep't 1969).

3 Md.—Davis v. State, 294 Md. 370, 451 A.2d 107, 6 Ed. Law Rep. 1009 (1982).

4 N.Y.—In re Elwell, 55 Misc. 2d 252, 284 N.Y.S.2d 924 (Fam. Ct. 1967).

5 **Philosophical opposition**
U.S.—Kleid v. Board of Ed. of Fulton, Kentucky Independent School Dist., 406 F. Supp. 902 (W.D. Ky. 1976).

6 Md.—Davis v. State, 294 Md. 370, 451 A.2d 107, 6 Ed. Law Rep. 1009 (1982).
Mass.—Dalli v. Board of Ed., 358 Mass. 753, 267 N.E.2d 219 (1971).

7 U.S.—Sherr v. Northport-East Northport Union Free School Dist., 672 F. Supp. 81, 42 Ed. Law Rep. 1103 (E.D. N.Y. 1987).

8 N.Y.—Brown v. City School Dist. of City of Corning, 104 Misc. 2d 796, 429 N.Y.S.2d 355 (Sup 1980), judgment aff'd, 83 A.D.2d 755, 444 N.Y.S.2d 878 (4th Dep't 1981).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

1. Education

a. In General

§ 879. Patriotic ceremonies

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1352, 1353

The Constitution does not prohibit patriotic or ceremonial exercises which may contain some reference to God.

The Constitution does not prohibit patriotic or ceremonial exercises which may contain some reference to God,[1] and a requirement that the pledge of allegiance in a form that includes the phrase "under God" be recited does not constitute either a deprivation of the free exercise of religion,[2] or the establishment of religion.[3] However, participation in patriotic ceremonies may not be compelled with respect to children who object on the ground of free exercise of religion,[4] and a statute or regulation requiring children to salute the American flag as a prerequisite to continued attendance at a public school is invalid as denying freedom of worship.[5]

Footnotes

1 N.H.—Opinion of the Justices, 108 N.H. 97, 228 A.2d 161 (1967).

2 U.S.—Smith v. Denny, 280 F. Supp. 651 (E.D. Cal. 1968).

3 U.S.—Smith v. Denny, 280 F. Supp. 651 (E.D. Cal. 1968).

Standing to challenge inclusion of words, "under God"

U.S.—Newdow v. Rio Linda Union School Dist., 597 F.3d 1007, 254 Ed. Law Rep. 544 (9th Cir. 2010).

4 U.S.—Lanner v. Wimmer, 662 F.2d 1349, 1 Ed. Law Rep. 138 (10th Cir. 1981).

5 U.S.—West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628, 147 A.L.R. 674 (1943).

Kan.—State v. Smith, 155 Kan. 588, 127 P.2d 518, 141 A.L.R. 1023 (1942).

Okla.—Pendley v. State, 77 Okla. Crim. 259, 141 P.2d 118 (1943).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

1. Education

a. In General

§ 880. Prayer and other religious observances

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1349, 1350

Religious observances in public schools are prohibited by the Establishment Clause of the First Amendment.

While the Religion Clauses of the First Amendment do not impose a prohibition on all religious activity in public schools,[1] the Establishment Clause is violated if the State prescribes an exercise, the purpose or primary effect of which is religious,[2] even though the observance on the part of students is voluntary,[3] and thus, a state initiated program of religious observance in public schools constitutes a violation of the Establishment Clause.[4] School sponsorship of a religious message is impermissible because it sends the ancillary message to members of the audience who are nonadherents that they are outsiders, and not full members of the political community, while sending an accompanying message to adherents that they are insiders, and favored members of the political community.[5] It is not material that religious practices in public schools might be a relatively minor encroachment on the First Amendment.[6]

In accordance with these general rules, the Establishment Clause is violated by Bible readings and the recitation by students of the Lord's Prayer as part of the curricular activities of students required by law to attend school,[7] even though individual students may absent themselves upon parental request,[8] and by the recitation by a teacher of an extemporaneous prayer and a Bible story.[9] It is also a violation of the Establishment Clause for a board of education to have a practice of opening its meetings with a prayer.[10] Furthermore, the distribution of Bibles in public schools violates the Establishment Clause,[11] as does the placement of religious texts on display in schoolrooms, at least when there is no secular purpose for doing so.[12] Accordingly, a statute or regulation may prohibit a public school teacher from teaching sectarian religion and doctrines during school hours and forbid the dissemination of religious literature during such time.[13]

Prayer in prescribed form.

Under the Establishment Clause of the First Amendment, a government, whether state or local, is without power to prescribe by law any particular form of prayer to be used as an official prayer in carrying on any program of governmentally sponsored religious activity in public schools.[14] A prayer composed by a governmental body for use in public schools is not freed from the limitations of the Establishment Clause by the fact that it is denominationally neutral,[15] that it does not amount to total establishment of one particular religious sect to the exclusion of all others,[16] or that observance on the part of students is voluntary.[17]

Voluntary prayer; prayer offered by volunteer.

The First Amendment's Religion Clauses do not prohibit any public school student from voluntarily praying at any time before, during, or after the school day.[18] However, a statute providing for the offering of a prayer by a student volunteer at the beginning of the school day violates the Establishment Clause notwithstanding that students may be excused from such exercises.[19] Also, notwithstanding that participation in prayer is voluntary, and students may be excused therefrom, permitting a teacher to select a volunteer student to lead prayer, or for want thereof, allowing the teacher to do so, also violates the Establishment Clause.[20]

Moment of silence.

The U.S. Supreme court has struck down a state statute authorizing a daily period of silence in public schools for meditation or voluntary prayer as an endorsement of religion lacking any clearly secular purpose in violation of the Establishment Clause of the First Amendment.[21]

Holiday observance.

Holiday observances by a public school which permit the temporary display of religious symbols and the prudent and objective presentation of religious music, art, literature and drama do not violate the Establishment Clause if the holiday observed has both a religious and a secular basis.[22] Furthermore, such observance does not violate the Free Exercise Clause where students may be excused from attendance if they so choose.[23]

Litigation expenses.

A state superintendent of public instruction's disbursement of state funds to support preparation of a school district's petition for U.S. Supreme Court review of a school prayer case was not an appropriation of public funds for religious worship in violation of the state constitution since to advocate the legality of a practice is not to fund that practice.[24]

CUMULATIVE SUPPLEMENT

Cases:

There are circumstances in which a police officer may lawfully prevent a person from praying at a particular time and place. Sause v. Bauer, 138 S. Ct. 2561 (2018).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Santa Fe Independent School Dist. v. Doe, 530 U.S. 290, 120 S. Ct. 2266, 147 L. Ed. 2d 295, 145 Ed. Law Rep. 21 (2000).

2 U.S.—Florey v. Sioux Falls School Dist. 49-5, 619 F.2d 1311 (8th Cir. 1980).
N.H.—Opinion of the Justices, 108 N.H. 97, 228 A.2d 161 (1967).
Denominationally neutral program
U.S.—Mangold v. Albert Gallatin Area School Dist., Fayette County, Pa., 438 F.2d 1194 (3d Cir. 1971).

3 U.S.—Mangold v. Albert Gallatin Area School Dist., Fayette County, Pa., 438 F.2d 1194 (3d Cir. 1971); Florey v. Sioux Falls School Dist. 49-5, 619 F.2d 1311 (8th Cir. 1980).
N.H.—Opinion of the Justices, 108 N.H. 97, 228 A.2d 161 (1967).

4 U.S.—Mangold v. Albert Gallatin Area School Dist., Fayette County, Pa., 438 F.2d 1194 (3d Cir. 1971).
Mass.—Commissioner of Ed. v. School Committee of Leyden, 358 Mass. 776, 267 N.E.2d 226 (1971).
N.J.—State Bd. of Ed. v. Board of Ed. of Netcong, 108 N.J. Super. 564, 262 A.2d 21 (Ch. Div. 1970), aff'd, 57 N.J. 172, 270 A.2d 412 (1970).
Voluntary prayer, invocations, and/or benedictions
D.C.—Committee for Voluntary Prayer v. Wimberly, 704 A.2d 1199, 123 Ed. Law Rep. 776 (D.C. 1997).
Seminal public school events
Integrating religious activity into seminal public school events violates the Establishment Clause even when attendance and participation are not mandated by the school.
U.S.—Does v. Enfield Public Schools, 716 F. Supp. 2d 172 (D. Conn. 2010).

5 U.S.—Santa Fe Independent School Dist. v. Doe, 530 U.S. 290, 120 S. Ct. 2266, 147 L. Ed. 2d 295, 145 Ed. Law Rep. 21 (2000).

6 U.S.—School Dist. of Abington Tp., Pa. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963).

7 U.S.—Jaffree v. Board of School Com'rs of Mobile County, 459 U.S. 1314, 103 S. Ct. 842, 74 L. Ed. 2d 924, 9 Ed. Law Rep. 21 (1983).
N.H.—Opinion of The Justices, 113 N.H. 297, 307 A.2d 558 (1973).
Public address system
U.S.—Goodwin v. Cross County School Dist. No. 7, 394 F. Supp. 417 (E.D. Ark. 1973).

8 U.S.—School Dist. of Abington Tp., Pa. v. Schempp, 374 U.S. 203, 83 S. Ct. 1560, 10 L. Ed. 2d 844 (1963).

9 Pa.—Fink v. Board of Ed. of Warren County School Dist., 65 Pa. Commw. 320, 442 A.2d 837, 3 Ed. Law Rep. 105 (1982).

10 **Legislative prayer exception inapplicable**
U.S.—Coles ex rel. Coles v. Cleveland Bd. of Educ., 171 F.3d 369, 133 Ed. Law Rep. 392, 1999 FED App. 0101P (6th Cir. 1999).

11 U.S.—Goodwin v. Cross County School Dist. No. 7, 394 F. Supp. 417 (E.D. Ark. 1973).
N.J.—Tudor v. Board of Ed. of Borough of Rutherford, 14 N.J. 31, 100 A.2d 857, 45 A.L.R.2d 729 (1953).

12 **Ten Commandments**
U.S.—Stone v. Graham, 449 U.S. 39, 101 S. Ct. 192, 66 L. Ed. 2d 199 (1980).

13 N.M.—Zellers v. Huff, 1951-NMSC-072, 55 N.M. 501, 236 P.2d 949 (1951).

14 U.S.—Engel v. Vitale, 370 U.S. 421, 82 S. Ct. 1261, 8 L. Ed. 2d 601, 86 A.L.R.2d 1285 (1962).

15 U.S.—Jaffree v. Board of School Com'rs of Mobile County, 459 U.S. 1314, 103 S. Ct. 842, 74 L. Ed. 2d 924, 9 Ed. Law Rep. 21 (1983); Engel v. Vitale, 370 U.S. 421, 82 S. Ct. 1261, 8 L. Ed. 2d 601, 86 A.L.R.2d 1285 (1962).

Kindergarten prayers

U.S.—DeSpain v. DeKalb County Community School Dist. 428, 384 F.2d 836, 30 A.L.R.3d 1342 (7th Cir. 1967).

16 U.S.—Engel v. Vitale, 370 U.S. 421, 82 S. Ct. 1261, 8 L. Ed. 2d 601, 86 A.L.R.2d 1285 (1962).

17 N.Y.—Engel v. Vitale, 370 U.S. 421, 82 S. Ct. 1261, 8 L. Ed. 2d 601, 86 A.L.R.2d 1285 (1962).

18 U.S.—Santa Fe Independent School Dist. v. Doe, 530 U.S. 290, 120 S. Ct. 2266, 147 L. Ed. 2d 295, 145 Ed. Law Rep. 21 (2000).

19 Mass.—Kent v. Commissioner of Ed., 380 Mass. 235, 402 N.E.2d 1340 (1980).

20 U.S.—Karen B. v. Treen, 653 F.2d 897 (5th Cir. 1981), judgment aff'd, 455 U.S. 913, 102 S. Ct. 1267, 71 L. Ed. 2d 455 (1982).

21 U.S.—Wallace v. Jaffree, 472 U.S. 38, 105 S. Ct. 2479, 86 L. Ed. 2d 29, 25 Ed. Law Rep. 39 (1985).

22 U.S.—Florey v. Sioux Falls School Dist. 49-5, 619 F.2d 1311 (8th Cir. 1980).

23 U.S.—Florey v. Sioux Falls School Dist. 49-5, 619 F.2d 1311 (8th Cir. 1980).

24 Utah—Society of Separationists, Inc. v. Taggart, 862 P.2d 1339, 87 Ed. Law Rep. 287 (Utah 1993).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

1. Education

a. In General

§ 881. Prayer and other religious observances—Student sponsored activities; sports events

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1342, 1345(1), 1347

A public school act requirement that schools which create a limited open forum for noncurriculum-related student groups must provide equal access to student religious groups does not violate the Establishment Clause.

A public school act requirement that schools which create a limited open forum for noncurriculum-related student groups must provide equal access to student religious groups does not violate the Establishment Clause.[1] With respect to club meetings held after school hours, not sponsored by the school, and open to any student who obtains parental consent, when a limited public forum is available for use by groups presenting any viewpoint, there is no Establishment Clause violation simply because only groups presenting a religious viewpoint have opted to take advantage of the forum at a particular time.[2] On the other hand, the prohibition of a student sponsored and conducted communal prayer meeting on school property does not impinge on the free exercise of religion.[3]

Sports events.

Student-led, student-initiated invocations prior to football games, as authorized by the policy of a public school district, violate the Establishment Clause where the invocations are given over the school's public address system by a speaker elected by a majority of student body and take place on government property at government-sponsored, school-related events; where the expressed purposes of the policy encourage the selection of a religious message; and where the audience will perceive the message as a public expression of majority views delivered with the district's approval.[4]

Footnotes

1 U.S.—Board of Educ. of Westside Community Schools v. Mergens By and Through Mergens, 496 U.S. 226, 110 S. Ct. 2356, 110 L. Ed. 2d 191, 60 Ed. Law Rep. 320 (1990).
Use permitted despite state conflict
The Equal Access Act (20 U.S.C.A. §§ 4071 to 4074) was enforceable notwithstanding conflict with a state constitutional provision arguably prohibiting religious groups from using school property.
U.S.—Hoppock By and Through Hoppock v. Twin Falls School Dist. No. 411, 772 F. Supp. 1160, 70 Ed. Law Rep. 81 (D. Idaho 1991).

2 **Risk that children would perceive endorsement of religion outweighed**
U.S.—Good News Club v. Milford Central School, 533 U.S. 98, 121 S. Ct. 2093, 150 L. Ed. 2d 151, 154 Ed. Law Rep. 45 (2001).

3 U.S.—Brandon v. Board of Ed. of Guilderland Central School Dist., 635 F.2d 971 (2d Cir. 1980).

4 U.S.—Santa Fe Independent School Dist. v. Doe, 530 U.S. 290, 120 S. Ct. 2266, 147 L. Ed. 2d 295, 145 Ed. Law Rep. 21 (2000).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

1. Education

a. In General

§ 882. Prayer and other religious observances—Graduation ceremonies

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1351

While invocations and benedictions at high school graduation ceremonies do not violate the First Amendment, the First Amendment Establishment Clause is violated by excessive official involvement in the offering of a prayer.

Invocations and benedictions at high school graduation ceremonies do not violate either the Establishment Clause[1] or the Free Exercise Clause[2] of the First Amendment, or a state constitutional provision guaranteeing the right to worship according to the dictates of one's conscience.[3] However, a public school's activities in connection with the offering of prayer at a graduation ceremony constitute government involvement prohibited by the Establishment Clause where school officials decide that there will be a prayer at the ceremony, select a clergyman to give the prayer, and dictate the content of the prayer by presenting to the clergyman a pamphlet setting forth guidelines for a "nonsectarian" prayer at school graduations.[4] This is so even though attendance at the graduation ceremony is completely voluntary, students are not required to join in the message in any way (although they are required to stand and remain silent), and the prayer and closing benediction are only a few minutes long.[5]

The practice of allowing senior public high school students to determine whether to include prayer in their graduation ceremonies violates the Establishment Clause,[6] particularly in the case of sectarian and proselytizing prayers.[7]

Footnotes

1 U.S.—Goodwin v. Cross County School Dist. No. 7, 394 F. Supp. 417 (E.D. Ark. 1973); Wood v. Mt. Lebanon Tp. School Dist., 342 F. Supp. 1293 (W.D. Pa. 1972).
Pa.—Wiest v. Mt. Lebanon School Dist., 457 Pa. 166, 320 A.2d 362 (1974).

2 U.S.—Grossberg v. Deusebio, 380 F. Supp. 285 (E.D. Va. 1974).
Pa.—Wiest v. Mt. Lebanon School Dist., 457 Pa. 166, 320 A.2d 362 (1974).

3 Pa.—Wiest v. Mt. Lebanon School Dist., 457 Pa. 166, 320 A.2d 362 (1974).

4 U.S.—Lee v. Weisman, 505 U.S. 577, 112 S. Ct. 2649, 120 L. Ed. 2d 467, 75 Ed. Law Rep. 43 (1992).

5 U.S.—Lee v. Weisman, 505 U.S. 577, 112 S. Ct. 2649, 120 L. Ed. 2d 467, 75 Ed. Law Rep. 43 (1992).

6 U.S.—American Civil Liberties Union of New Jersey v. Black Horse Pike Regional Bd. of Educ., 84 F.3d 1471, 109 Ed. Law Rep. 1118 (3d Cir. 1996).
Cal.—Sands v. Morongo Unified School Dist., 53 Cal. 3d 863, 281 Cal. Rptr. 34, 809 P.2d 809, 67 Ed. Law Rep. 730 (1991).

7 U.S.—Doe v. Santa Fe Independent School Dist., 168 F.3d 806, 132 Ed. Law Rep. 687 (5th Cir. 1999), aff'd, 530 U.S. 290, 120 S. Ct. 2266, 147 L. Ed. 2d 295, 145 Ed. Law Rep. 21 (2000).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

1. Education

a. In General

§ 883. Public aid to religious schools

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1363 to 1366, 1369

Whether aid to religious schools violates the Establishment Clause of the Federal Constitution depends upon whether a statute has a secular purpose and has a primary effect of advancing or inhibiting religion.

In determining whether aid to religious schools violates the Establishment Clause of the Federal Constitution, the court must ask whether a statute (1) has a secular purpose, and (2) has a primary effect of advancing or inhibiting religion.[1] For these purposes, government aid has the effect of advancing religion if it: (1) results in governmental indoctrination; (2) defines its recipients by reference to religion; or (3) creates an excessive entanglement.[2] If aid to schools, even "direct aid," is neutrally available and, before reaching or benefiting any religious school, first passes through the hands, literally or figuratively, of numerous private citizens who are free to direct the aid elsewhere, the government has not provided any "support of religion" for Establishment Clause purposes.[3] Thus, the Establishment Clause does not require the exclusion of pervasively sectarian schools from otherwise permissible aid programs, and whether a recipient school is pervasively sectarian is accordingly not relevant to the constitutionality of a school-aid program.[4] Provision to religious schools of aid which is divertible to religious

use is not necessarily impermissible since the issue is not divertibility but whether the aid itself has an impermissible content; where the aid would be suitable for use in a public school, it is also suitable for use in any private school.[5] The Supreme Court has not accepted the recurrent argument that all aid is forbidden because aid to one aspect of an institution frees it to spend its other resources on religious ends.[6] Furthermore, the Court has explicitly abandoned the presumption that placement of public employees on parochial school grounds inevitably results in an impermissible effect of state-sponsored indoctrination of religion or constitutes a symbolic union between government and religion.[7]

Public expenditures incurred for the provision on church-related school premises of various services for students such as medical, diagnostic, psychological, or diagnostic, speech, and hearing services,[8] and for the provision of church related school premises of therapeutic guidance, and remedial services for students of church related schools,[9] have been found to be constitutionally permissible even though they incidentally support a church related school.

The lending of textbooks by the state to students of church related schools is permissible under the Establishment Clause of the First Amendment[10] unless the aid actually is used for religious purposes.[11]

Domestic standards of the Establishment Clause have been applied to an international grant program.[12]

Shared time or dual enrollment.

A federally funded program providing supplemental, remedial instruction to disadvantaged children on a neutral basis is not invalid under the Establishment Clause when such instruction is given on the premises of sectarian schools by government employees where the program does not result in governmental indoctrination, define its recipients by reference to religion, or create an excessive entanglement.[13] Such a program does not define its recipients by reference to religion as long as services are available to all children who meet statutory eligibility requirements, no matter what their religious beliefs or where they go to school.[14] Shared time or dual enrollment programs, maintained by public funds, whereby students of public and church related schools are instructed jointly in certain secular subjects on public school premises, have been upheld with respect to students of religious schools under a state constitutional provision pertaining to religious freedom.[15] Furthermore, such programs on the premises of nonpublic schools controlled by the public school authorities or on premises leased from a church related school are valid under state constitutional provisions.[16]

Vouchers.

A school voucher program, enacted for the valid secular purpose of providing educational assistance to poor children in a demonstrably failing public school system, does not violate the Establishment Clause despite the fact that a majority of participating students have enrolled in religiously affiliated schools, where the program is neutral in all respects toward religion, and any direction of government aid to religious schools is the result of individual recipients' independent private choices.[17] However, by giving scholarship priority to students whose parents belong to a religious group that supports a sectarian school, a school voucher program's selection criteria provide an incentive for parents to modify their religious beliefs or practices in violation of the Establishment Clause.[18]

State constitutions.

Under various state constitutions, sectarian education may not be supported by public funds.[19] Textbook loan programs are permissible under some state constitutions[20] but have been invalidated under other state constitutions.[21]

Footnotes

1 U.S.—Mitchell v. Helms, 530 U.S. 793, 120 S. Ct. 2530, 147 L. Ed. 2d 660, 145 Ed. Law Rep. 44 (2000); Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997).

2 U.S.—Mitchell v. Helms, 530 U.S. 793, 120 S. Ct. 2530, 147 L. Ed. 2d 660, 145 Ed. Law Rep. 44 (2000); Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997).

3 U.S—Mitchell v. Helms, 530 U.S. 793, 120 S. Ct. 2530, 147 L. Ed. 2d 660, 145 Ed. Law Rep. 44 (2000).

Attenuated financial benefit not fatal

U.S.—Zobrest v. Catalina Foothills School Dist., 509 U.S. 1, 113 S. Ct. 2462, 125 L. Ed. 2d 1, 2 A.D.D. 176, 83 Ed. Law Rep. 930 (1993).

Free and independent choice of parents

State payments for education that reach a religious school indirectly as the result of a free and independent choice of parents do not violate the Establishment Clause.

Me.—Anderson v. Town of Durham, 2006 ME 39, 895 A.2d 944, 207 Ed. Law Rep. 978 (Me. 2006).

4 U.S—Mitchell v. Helms, 530 U.S. 793, 120 S. Ct. 2530, 147 L. Ed. 2d 660, 145 Ed. Law Rep. 44 (2000).

5 U.S—Mitchell v. Helms, 530 U.S. 793, 120 S. Ct. 2530, 147 L. Ed. 2d 660, 145 Ed. Law Rep. 44 (2000).

6 U.S—Mitchell v. Helms, 530 U.S. 793, 120 S. Ct. 2530, 147 L. Ed. 2d 660, 145 Ed. Law Rep. 44 (2000).

7 U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997).

8 U.S.—Wolman v. Walter, 433 U.S. 229, 97 S. Ct. 2593, 53 L. Ed. 2d 714 (1977) (overruled on other grounds by, Mitchell v. Helms, 530 U.S. 793, 120 S. Ct. 2530, 147 L. Ed. 2d 660, 145 Ed. Law Rep. 44 (2000)); Americans United For Separation of Church and State v. School Dist. of City of Grand Rapids, 546 F. Supp. 1071, 6 Ed. Law Rep. 560 (W.D. Mich. 1982), judgment aff'd, 718 F.2d 1389, 14 Ed. Law Rep. 40 (6th Cir. 1983), opinion aff'd, 473 U.S. 373, 105 S. Ct. 3216, 87 L. Ed. 2d 267, 25 Ed. Law Rep. 1006 (1985) (overruled on other grounds by, Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997)).

N.H.—Opinion of the Justices, 115 N.H. 553, 345 A.2d 412 (1975).

9 U.S.—Wolman v. Walter, 433 U.S. 229, 97 S. Ct. 2593, 53 L. Ed. 2d 714 (1977) (overruled on other grounds by, Mitchell v. Helms, 530 U.S. 793, 120 S. Ct. 2530, 147 L. Ed. 2d 660, 145 Ed. Law Rep. 44 (2000)).

N.H.—Opinion of the Justices, 115 N.H. 553, 345 A.2d 412 (1975).

10 U.S.—Mueller v. Allen, 463 U.S. 388, 103 S. Ct. 3062, 77 L. Ed. 2d 721, 11 Ed. Law Rep. 763 (1983); Meek v. Pittenger, 421 U.S. 349, 95 S. Ct. 1753, 44 L. Ed. 2d 217 (1975) (overruled on other grounds by, Mitchell v. Helms, 530 U.S. 793, 120 S. Ct. 2530, 147 L. Ed. 2d 660, 145 Ed. Law Rep. 44 (2000)); Board of Ed. of Central School Dist. No. 1 v. Allen, 392 U.S. 236, 88 S. Ct. 1923, 20 L. Ed. 2d 1060 (1968).

11 U.S—Mitchell v. Helms, 530 U.S. 793, 120 S. Ct. 2530, 147 L. Ed. 2d 660, 145 Ed. Law Rep. 44 (2000).

12 U.S.—Lamont v. Schultz, 748 F. Supp. 1043, 63 Ed. Law Rep. 886 (S.D. N.Y. 1990), decision aff'd, 948 F.2d 825, 71 Ed. Law Rep. 50 (2d Cir. 1991).

13 U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997).

14 U.S.—Agostini v. Felton, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997).

15 Mich.—Snyder v. Charlotte Public School Dist., Eaton County, 421 Mich. 517, 365 N.W.2d 151, 24 Ed. Law Rep. 466, 43 A.L.R.4th 745 (1984).

16 Mich.—In re Proposal C., 384 Mich. 390, 185 N.W.2d 9 (1971).

17 U.S.—Zelman v. Simmons-Harris, 536 U.S. 639, 122 S. Ct. 2460, 153 L. Ed. 2d 604, 166 Ed. Law Rep. 30 (2002).

As to income tax credits, see § 898.

Vouchers upheld

Ind.—Meredith v. Pence, 984 N.E.2d 1213, 290 Ed. Law Rep. 998 (Ind. 2013).

Wis.—Jackson v. Benson, 218 Wis. 2d 835, 578 N.W.2d 602, 126 Ed. Law Rep. 399 (1998).

18 Ohio—Simmons-Harris v. Goff, 86 Ohio St. 3d 1, 1999-Ohio-77, 711 N.E.2d 203, 135 Ed. Law Rep. 596, 78 A.L.R.5th 623 (1999).

19 Ariz.—Niehaus v. Huppenthal, 233 Ariz. 195, 310 P.3d 983 (Ct. App. Div. 1 2013), review denied, (Mar. 21, 2014).

Haw.—Spears v. Honda, 51 Haw. 1, 51 Haw. 103, 449 P.2d 130 (1968).

Idaho—Epeldi v. Engelking, 94 Idaho 390, 488 P.2d 860 (1971).

Ky.—University of Cumberlands v. Pennybacker, 308 S.W.3d 668, 256 Ed. Law Rep. 945 (Ky. 2010).

Mich.—In re Proposal C., 384 Mich. 390, 185 N.W.2d 9 (1971).

Bond program

A four-part test is used for determining whether the issuance of government bonds benefiting a religiously affiliated school violates a state constitutional provision prohibiting state aid for sectarian purposes: (1) the bond program must serve the public interest and provide no more than an incidental benefit to religion, (2) the program must be available to both secular and sectarian institutions on an equal basis, (3) the program must prohibit the use of bond proceeds for religious projects, and (4) the program must not impose any financial burden on the government.

Cal.—California Statewide Communities Development Authority v. All Persons Interested in Matter of Validity of Purchase Agreement, 40 Cal. 4th 788, 55 Cal. Rptr. 3d 487, 152 P.3d 1070, 216 Ed. Law Rep. 895 (2007).

20 N.H.—Opinion of the Justices, 109 N.H. 578, 258 A.2d 343 (1969).

N.Y.—Board of Ed. of Cent. School Dist. No. 1, Towns of East Greenbush Rensselaer County v. Allen, 20 N.Y.2d 109, 281 N.Y.S.2d 799, 228 N.E.2d 791 (1967), judgment aff'd, 392 U.S. 236, 88 S. Ct. 1923, 20 L. Ed. 2d 1060 (1968).

R.I.—Bowerman v. O'Connor, 104 R.I. 519, 247 A.2d 82 (1968).

21 Cal.—California Teachers Assn. v. Riles, 29 Cal. 3d 794, 176 Cal. Rptr. 300, 632 P.2d 953 (1981).

Mo.—Mallory v. Barrera, 544 S.W.2d 556 (Mo. 1976).

S.D.—McDonald v. School Bd. of Yankton Independent School Dist. No. 1 of Yankton, 90 S.D. 599, 246 N.W.2d 93 (1976).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

1. Education

a. In General

§ 884. Public aid to religious schools—School bus transportation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1367

A state may generally provide for the transportation of students to religious schools by bus as part of a neutral program although the practice may be prohibited under a state constitution.

The State may spend public funds to pay the bus fares of parochial school pupils as part of a general program under which it pays the fares of pupils attending public and other schools without violating the Establishment Clause of the Federal Constitution,[1] or some state constitutional provisions relating to religious liberty,[2] but it has been considered in violation of other state constitutional provisions.[3] Furthermore, transportation across school district lines may be provided for public and church related school students[4] although, according to some authority, not for church related school students only.[5] A statute is not invalid as advancing religion because it provides for transportation of sectarian students beyond school district limits, within regions defined by the legislature, so long as public and parochial students are eligible for busing to their schools on the same terms and the relative costs per student of busing sectarian and public students remains roughly proportional; however, a portion of such a statute requiring the State Commissioner of Education, in deciding whether to grant a variance to allow a private school

student to be bused outside a transportation region, to determine whether the school the sectarian student wishes to attend is "similar" to a school located within the region is invalid as fostering excessive entanglement.[6]

Without violating religious liberties, a statute or regulation may provide for transportation for school children[7] and may limit such transportation to children attending the public schools.[8]

When the neutral service of providing school bus transportation is transformed into a vehicle for promoting a particular religious belief, it violates the First Amendment.[9]

Footnotes

1 U.S.—Mueller v. Allen, 463 U.S. 388, 103 S. Ct. 3062, 77 L. Ed. 2d 721, 11 Ed. Law Rep. 763 (1983).
Neb.—State ex rel. Bouc v. School Dist. of City of Lincoln, 211 Neb. 731, 320 N.W.2d 472, 4 Ed. Law Rep. 857 (1982).
Wis.—State ex rel. Vanko v. Kahl, 52 Wis. 2d 206, 188 N.W.2d 460 (1971).

2 Ill.—Board of Ed., School Dist. No. 142, Cook County v. Bakalis, 54 Ill. 2d 448, 299 N.E.2d 737 (1973).
Pa.—Springfield School Dist., Delaware County v. Department of Ed., 483 Pa. 539, 397 A.2d 1154 (1979), and School District of Pittsburgh v. Pennsylvania Department of Education, 443 U.S. 901, 99 S. Ct. 3091, 61 L. Ed. 2d 869 (1979).
Federal and state funds present same issues
U.S.—Bennett v. Kline, 486 F. Supp. 36 (E.D. Pa. 1980), aff'd, 633 F.2d 209 (3d Cir. 1980).

3 Haw.—Spears v. Honda, 51 Haw. 1, 51 Haw. 103, 449 P.2d 130 (1968).
Idaho—Epeldi v. Engelking, 94 Idaho 390, 488 P.2d 860 (1971).

4 Pa.—Springfield School Dist., Delaware County v. Department of Ed., 483 Pa. 539, 397 A.2d 1154 (1979).
Reimbursement as similar to provision of transportation
U.S.—Bennett v. Kline, 486 F. Supp. 36 (E.D. Pa. 1980), aff'd, 633 F.2d 209 (3d Cir. 1980).

5 U.S.—Americans United for Separation of Church and State v. Benton, 413 F. Supp. 955 (S.D. Iowa 1975); Members of Jamestown School Committee v. Schmidt, 427 F. Supp. 1338 (D.R.I. 1977).

6 U.S.—Members of Jamestown School Committee v. Schmidt, 699 F.2d 1, 9 Ed. Law Rep. 70 (1st Cir. 1983).

7 Ky.—Nichols v. Henry, 301 Ky. 434, 191 S.W.2d 930, 168 A.L.R. 1385 (1945).

8 U.S.—Luetkemeyer v. Kaufmann, 364 F. Supp. 376 (W.D. Mo. 1973), judgment aff'd, 419 U.S. 888, 95 S. Ct. 167, 42 L. Ed. 2d 134 (1974).
Idaho—Epeldi v. Engelking, 94 Idaho 390, 488 P.2d 860 (1971).
W. Va.—Janasiewicz v. Board of Educ. of Kanawha County, 171 W. Va. 423, 299 S.E.2d 34, 8 Ed. Law Rep. 864 (1982).
Transportation withdrawn
N.Y.—O'Donnell v. Antin, 81 Misc. 2d 849, 369 N.Y.S.2d 895 (Sup 1974), judgment aff'd, 36 N.Y.2d 941, 373 N.Y.S.2d 549, 335 N.E.2d 854 (1975).

9 **Deployment of only male drivers advanced Hassidic belief**
U.S.—Bollenbach v. Board of Educ. of Monroe-Woodbury Cent. School Dist., 659 F. Supp. 1450, 39 Ed. Law Rep. 1129 (S.D. N.Y. 1987).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

1. Education

a. In General

§ 885. Use of public school facilities by religious groups

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1345

Public school facilities may constitutionally be used outside of school hours by religious groups for religious services or educational classes at a rental rate reflecting out-of-pocket expenses incurred by the school board provided that such use is temporary rather than prolonged.

The use of public school facilities outside of school hours by religious groups for religious services or educational classes at a rental rate reflecting out-of-pocket expenses incurred by the school board is not in violation of the establishment clauses of the federal or state constitutions[1] provided that such use is temporary rather than prolonged.[2] No valid Establishment Clause concern exists when a school grants access to its facilities on a religion-neutral basis to a wide spectrum of outside groups.[3] A school district procedure to consider applications for after-hours use of public school facilities by certain religious groups, solely to assess constitutional issues that the group's use might raise, is not violative of the constitutional right to religious freedom.[4]

On the other hand, a school board violates the First Amendment by changing its existing policy for the open access to and use of school facilities by the public and refusing to rent such facilities to any group with a religious purpose.[5]

Footnotes

1 N.J.—Resnick v. East Brunswick Tp. Bd. of Ed., 77 N.J. 88, 389 A.2d 944 (1978).

2 N.J.—Resnick v. East Brunswick Tp. Bd. of Ed., 77 N.J. 88, 389 A.2d 944 (1978).

3 U.S.—Bronx Household of Faith v. Board of Educ. of City of New York Community School Dist. No. 10, 855 F. Supp. 2d 44, 283 Ed. Law Rep. 855 (S.D. N.Y. 2012).

Religious baccalaureate service

U.S.—Randall v. Pegan, 765 F. Supp. 793, 68 Ed. Law Rep. 395 (W.D. N.Y. 1991).

4 **Use denied**

U.S.—Salinas v. School Dist. of Kansas City, Mo., 751 F.2d 288, 22 Ed. Law Rep. 97 (8th Cir. 1984).

Appearance that official support for religion exists

U.S.—Ford v. Manuel, 629 F. Supp. 771, 31 Ed. Law Rep. 424 (N.D. Ohio 1985).

5 U.S.—Shumway v. Albany County School Dist. No. One Bd. of Educ., 826 F. Supp. 1320, 84 Ed. Law Rep. 989 (D. Wyo. 1993).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

1. Education

b. Higher Education

§ 886. Higher education as affected by Establishment and Free Exercise Clauses of First Amendment, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1371, 1372

The proper extent of the First Amendment's religion clauses has been litigated in the context of higher education, with respect to such matters as educational standards, curriculum, and access to facilities.

The Establishment and the Free Exercise Clauses of the First Amendment are not violated by the application of statutes setting forth standards, in connection with the authorization of postsecondary educational institutions to issue degrees, to a theological institution,[1] or prohibiting the conferring of baccalaureate degrees by an unlicensed institution, to a sectarian college whose religious doctrine precludes state licensure.[2]

A state university policy whereby student teacher candidates can satisfy their teaching requirement at a parochial school violates the Establishment Clause.[3]

Curriculum.

A policy of a public university permitting a teacher of a nonreligious subject to introduce religious indoctrination into the classroom is violative of its religious neutrality under the Establishment Clause, and infringes upon the freedom of religion of the students, while a limitation on the teacher's act or exercise of religious expression is not an infringement on his or her right to hold religious beliefs.[4] However, a community college course on human sexuality was found not to violate the Establishment Clause, since it had a secular purpose, it could be conducted without excessive entanglements between government and religion, and it did not have the primary effect of advancing or inhibiting religion, even though texts contained passages critical of sexual teachings of some religions; religious and secular views of sexuality were presented to student to assist student in developing his or her attitudes toward sexual behavior.[5]

Access to facilities.

A university policy allowing equal access to its facilities to all student groups may, without violating the Establishment Clause, be extended to a student group desiring to use the facilities for religious worship and discussion.[6] It does not violate the Establishment Clause for public university to grant access to its facilities on religion neutral basis to wide spectrum of student groups, including groups which use meeting rooms for sectarian activities, accompanied by some devotional exercises, and that is so even where the upkeep, maintenance, and repair of facilities attributed to those uses is paid from student activity fund to which students are required to contribute.[7]

Student activities, groups and publications.

A university policy of not funding student organization activities which are intended to or which actually promote a particular religious point of view, even in a secular context, is facially constitutional.[8]

A law school's policy of requiring officially recognized student groups to comply with a the school's nondiscrimination policy does not violate the free exercise of religion clause where the open access policy ensures that the leadership, educational, and social opportunities afforded by officially recognized student groups are available to all students; helps the school police the terms of its policy without inquiring into a student group's motivation for membership restrictions; encourages tolerance, cooperation, and learning; and advances state-law goals.[9]

The viewpoint neutrality requirement of a university's mandatory student activity fee program has been held generally sufficient to protect the rights of students objecting to being required to pay fees subsidizing speech they find objectionable or offensive.[10]

It is permissible under the Establishment Clause of the First Amendment for a publicly supported institution of higher education to allow religious worship services to be conducted in a dormitory, and a regulation barring such services constitutes a burden on the free exercise of religion.[11]

The Free Exercise Clause of the First Amendment is not violated by requiring a private religious university to provide tangible services to homosexual student groups.[12]

Where a university program which provides funding for printing of student publications is neutral toward religion, making funds available for publications with a religious editorial viewpoint does not violate the Establishment Clause.[13] Furthermore, an occasional reference to subjects of a religious nature in a student newspaper of a public institution does not constitute the establishment of a religion.[14]

Footnotes

1 Tenn.—State ex rel. McLemore v. Clarksville School of Theology, 636 S.W.2d 706, 5 Ed. Law Rep. 1294 (Tenn. 1982).

2 N.J.—New Jersey State Bd. of Higher Educ. v. Board of Directors of Shelton College, 90 N.J. 470, 448 A.2d 988, 5 Ed. Law Rep. 1170 (1982).

3 U.S.—Stark v. St. Cloud State University, 802 F.2d 1046, 35 Ed. Law Rep. 387 (8th Cir. 1986).

4 Ind.—Lynch v. Indiana State University Bd. of Trustees, 177 Ind. App. 172, 378 N.E.2d 900 (1978).

5 U.S.—Gheta v. Nassau County Community College, 33 F. Supp. 2d 179, 132 Ed. Law Rep. 395 (E.D. N.Y. 1999).

6 U.S.—Widmar v. Vincent, 454 U.S. 263, 102 S. Ct. 269, 70 L. Ed. 2d 440, 1 Ed. Law Rep. 13 (1981).

7 U.S—Rosenberger v. Rector and Visitors of University of Virginia, 515 U.S. 819, 115 S. Ct. 2510, 132 L. Ed. 2d 700, 101 Ed. Law Rep. 552 (1995).

8 U.S.—Tipton v. University of Hawaii, 15 F.3d 922, 89 Ed. Law Rep. 441 (9th Cir. 1994).

9 U.S.—Christian Legal Soc. Chapter of the University of California, Hastings College of the Law v. Martinez, 561 U.S. 661, 130 S. Ct. 2971, 177 L. Ed. 2d 838, 57 A.L.R. Fed. 2d 573 (2010).

10 U.S.—Board of Regents of University of Wisconsin System v. Southworth, 529 U.S. 217, 120 S. Ct. 1346, 146 L. Ed. 2d 193, 142 Ed. Law Rep. 624 (2000).

11 Del.—Keegan v. University of Delaware, 349 A.2d 14 (Del. 1975).

12 D.C.—Gay Rights Coalition of Georgetown University Law Center v. Georgetown University, 536 A.2d 1, 44 Ed. Law Rep. 309 (D.C. 1987).

13 U.S.—Rosenberger v. Rector and Visitors of University of Virginia, 515 U.S. 819, 115 S. Ct. 2510, 132 L. Ed. 2d 700, 101 Ed. Law Rep. 552 (1995).

14 U.S.—Arrington v. Taylor, 380 F. Supp. 1348 (M.D. N.C. 1974).
N.Y.—Panarella v. Birenbaum, 32 N.Y.2d 108, 343 N.Y.S.2d 333, 296 N.E.2d 238 (1973).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

1. Education

b. Higher Education

§ 887. Tuition grants, scholarships, or loans

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1371, 1372

Programs for public tuition grants, scholarships, or loans to college students do not violate the establishment clause of federal or state constitutions provided that the institutions attended by the students receiving the public aid are not pervasively religious.

Programs for public tuition grants, scholarships, or loans to college students do not violate the establishment clause of federal or state constitutions[1] provided that the institutions attended by the students receiving the public aid are not pervasively religious,[2] do not require student participation in religious activities,[3] and do not prefer the enrollment of applicants of a certain faith.[4] The Establishment Clause does not preclude a state from extending assistance under a vocational rehabilitation program to a person with a physical disability studying at a religious college to prepare for a sectarian career.[5] Similar programs have been upheld as against a contention of the violation of the Free Exercise Clause.[6]

A state sponsored student incentive grant program for students attending institutions of higher learning does not violate state constitutional provisions, such as those embodying the same values of free exercise and governmental noninvolvement secured by the religion clauses of the First Amendment, prohibiting governmental aid to private and sectarian schools, or sectarian institution.[7] However, particular student aid programs for attendance in colleges have been declared violative of state constitutions.[8]

Footnotes

1 U.S.—Americans United for Separation of Church and State v. Blanton, 433 F. Supp. 97 (M.D. Tenn. 1977), judgment aff'd, 434 U.S. 803, 98 S. Ct. 39, 54 L. Ed. 2d 65 (1977).
Ala.—Alabama Ed. Ass'n v. James, 373 So. 2d 1076 (Ala. 1979).
Colo.—Americans United for Separation of Church and State Fund, Inc. v. State, 648 P.2d 1072, 5 Ed. Law Rep. 1017 (Colo. 1982).

2 U.S.—Lendall v. Cook, 432 F. Supp. 971 (E.D. Ark. 1977); Smith v. Board of Governors of University of North Carolina, 429 F. Supp. 871 (W.D. N.C. 1977), judgment aff'd, 434 U.S. 803, 98 S. Ct. 39, 54 L. Ed. 2d 65 (1977).
Exclusion of "pervasively sectarian" institutions of higher education
A state's exclusion of "pervasively sectarian" institutions of higher education from state scholarship programs expressly discriminated among religions, in violation of the First Amendment, by allowing aid to sectarian but not pervasively sectarian institutions; the discrimination was expressly based on the degree of religiosity of the institution and the extent to which that religiosity affected its operations as defined by such things as the content of its curriculum and the religious composition of its governing board.
U.S.—Colorado Christian University v. Weaver, 534 F.3d 1245, 235 Ed. Law Rep. 68 (10th Cir. 2008).

3 U.S.—Americans United for Separation of Church and State v. Bubb, 379 F. Supp. 872 (D. Kan. 1974).

4 U.S.—Americans United for Separation of Church and State v. Bubb, 379 F. Supp. 872 (D. Kan. 1974).

5 U.S.—Witters v. Washington Dept. of Services for the Blind, 474 U.S. 481, 106 S. Ct. 748, 88 L. Ed. 2d 846, 29 Ed. Law Rep. 496 (1986).

6 Va.—Miller v. Ayres, 214 Va. 171, 198 S.E.2d 634 (1973).
Denial of funds for theological instruction upheld
U.S.—Locke v. Davey, 540 U.S. 712, 124 S. Ct. 1307, 158 L. Ed. 2d 1, 185 Ed. Law Rep. 30 (2004).
Wash.—Witters v. State Com'n for the Blind, 112 Wash. 2d 363, 771 P.2d 1119, 53 Ed. Law Rep. 278 (1989).

7 Colo.—Americans United for Separation of Church and State Fund, Inc. v. State, 648 P.2d 1072, 5 Ed. Law Rep. 1017 (Colo. 1982).

8 Neb.—State ex rel. Rogers v. Swanson, 192 Neb. 125, 219 N.W.2d 726 (1974).
S.C.—Hartness v. Patterson, 255 S.C. 503, 179 S.E.2d 907 (1971).
Award of tuition differential
Alaska—Sheldon Jackson College v. State, 599 P.2d 127 (Alaska 1979).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

1. Education

b. Higher Education

§ 888. Public aid to religious institutions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1371

Public assistance for the construction and maintenance of facilities of church-related institutions of higher education is constitutionally permissible provided it serves a predominantly secular purpose.

The Establishment Clause of the First Amendment is not violated by the grant of public funds to church related institutions of higher education which perform secular educational functions[1] or other public aid for the construction or maintenance of educational facilities.[2] Furthermore, aid for construction purposes does not inhibit the free exercise of religion in violation of the First Amendment.[3] Aid to sectarian schools does not violate the Establishment Clause where the subsidized facilities are not used for the promulgation of religious beliefs,[4] and the recipient institutions do not require a particular religious affiliation on the part of their faculty or students[5] or that students undergo religious instruction.[6] However, such financial aid is in violation of the religion clauses of the First Amendment where the institution is pervasively religious[7] although a university's motivation or aspiration to follow certain teachings does not indicate that it is "controlled by a religious creed" under the Establishment Clause

such that religion dictates the corporate management of the university.[8] Aid to sectarian schools also violates the Establishment Clause where any restriction on the use of the financed facilities expires while they still have substantial value,[9]

The courts have upheld particular schemes for providing financial aid, or assistance for the construction of facilities, involving state[10] and county[11] bonds, and secured state loans.[12] However, a state constitution prohibiting aid to a church related school is violated by using bonds in such manner as to raise the possibility of a long range relationship of debtor and creditor.[13] A statute authorizing the expenditure of public funds to contract with a church related university for the purchase of a particular type of education violates the Establishment Clause[14] as well as the Free Exercise Clause.[15]

Footnotes

1 U.S.—Roemer v. Board of Public Works of Maryland, 426 U.S. 736, 96 S. Ct. 2337, 49 L. Ed. 2d 179 (1976).
N.Y.—College of New Rochelle v. Nyquist, 37 A.D.2d 461, 326 N.Y.S.2d 765 (3d Dep't 1971).

2 U.S.—Hunt v. McNair, 413 U.S. 734, 93 S. Ct. 2868, 37 L. Ed. 2d 923 (1973).
Cal.—California Educational Facilities Authority v. Priest, 12 Cal. 3d 593, 116 Cal. Rptr. 361, 526 P.2d 513 (1974).
Fla.—Nohrr v. Brevard County Educational Facilities Authority, 247 So. 2d 304 (Fla. 1971).
Funds earmarked for construction of sports arena
Mo.—Saint Louis University v. Masonic Temple Ass'n of St. Louis, 220 S.W.3d 721, 220 Ed. Law Rep. 404 (Mo. 2007).

3 U.S.—Tilton v. Richardson, 403 U.S. 672, 91 S. Ct. 2091, 29 L. Ed. 2d 790 (1971).

4 U.S.—Hunt v. McNair, 413 U.S. 734, 93 S. Ct. 2868, 37 L. Ed. 2d 923 (1973).
Ill.—Cecrle v. Illinois Educational Facilities Authority, 52 Ill. 2d 312, 288 N.E.2d 399 (1972).
Minn.—Minnesota Higher Ed. Facilities Authority v. Hawk, 305 Minn. 97, 232 N.W.2d 106, 95 A.L.R.3d 987 (1975).

5 Md.—Horace Mann League of U. S. of America, Inc. v. Board of Public Works, 242 Md. 645, 220 A.2d 51 (1966).
N.J.—Clayton v. Kervick, 59 N.J. 583, 285 A.2d 11 (1971).

6 N.J.—Clayton v. Kervick, 59 N.J. 583, 285 A.2d 11 (1971).

7 **City's bond issue**
Va.—Habel v. Industrial Development Authority of City of Lynchburg, 241 Va. 96, 400 S.E.2d 516, 65 Ed. Law Rep. 621 (1991).

8 Mo.—Saint Louis University v. Masonic Temple Ass'n of St. Louis, 220 S.W.3d 721, 220 Ed. Law Rep. 404 (Mo. 2007).

9 U.S.—Tilton v. Richardson, 403 U.S. 672, 91 S. Ct. 2091, 29 L. Ed. 2d 790 (1971).

10 U.S.—Hunt v. McNair, 413 U.S. 734, 93 S. Ct. 2868, 37 L. Ed. 2d 923 (1973).
Cal.—California Educational Facilities Authority v. Priest, 12 Cal. 3d 593, 116 Cal. Rptr. 361, 526 P.2d 513 (1974).
Minn.—Minnesota Higher Ed. Facilities Authority v. Hawk, 305 Minn. 97, 232 N.W.2d 106, 95 A.L.R.3d 987 (1975).

11 Fla.—Nohrr v. Brevard County Educational Facilities Authority, 247 So. 2d 304 (Fla. 1971).

12 N.J.—Clayton v. Kervick, 59 N.J. 583, 285 A.2d 11 (1971).

13 Ill.—Cecrle v. Illinois Educational Facilities Authority, 52 Ill. 2d 312, 288 N.E.2d 399 (1972).

14 Wis.—State ex rel. Warren v. Nusbaum, 55 Wis. 2d 316, 198 N.W.2d 650 (1972).

15 Wis.—State ex rel. Warren v. Nusbaum, 55 Wis. 2d 316, 198 N.W.2d 650 (1972).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

2. Labor and Employment

§ 889. Labor and employment as affected by constitutional guaranties of religious freedom, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1320

A number of governmental interests are sufficient to justify the regulation of labor and employment with respect to religious institutions.

The First Amendment does not bar the exercise of jurisdiction by a civil court in a nun's breach of employment contract action against a university where the nun did not perform any ministerial duties for the university.[1]

Collective bargaining; labor disputes.

A requirement of a labor relations act of good-faith collective bargaining by an employer does not constitute a compulsion of a religious belief in violation of the First Amendment.[2]

Furthermore, a requirement, as a condition of employment, that an employee pay union dues pursuant to a collective bargaining agreement does not infringe on religious liberty.[3] The assumption of jurisdiction over an affiliate of a religious organization

by a labor relations board does not infringe religious liberty where it operates in a manner similar to a secular or commercial enterprise, and its ability to propagate its belief will not be infringed,[4] but the assumption of jurisdiction over a church-operated school has been held a violation of the First Amendment.[5] The application of a state labor statute to a religious school does not violate the Establishment Clause nor the Free Exercise Clause of the First Amendment.[6] The First Amendment does not prohibit a state labor relations board from exercising jurisdiction over the labor relations between parochial schools and their lay teachers where the collective bargaining process is not claimed to be contrary to the organization's beliefs.[7]

Child labor laws.

The government's interest in the application and enforcement of its labor laws must prevail over the free exercise rights of church members to employ their children in industrial environments.[8]

Fair Labor Standards Act; minimum wages.

Application of the Fair Labor Standards Act to "associates" of a religious foundation's commercial enterprises does not violate the rights of the "associates" to freely exercise their religion or the right of the foundation to be free of excessive governmental entanglement in its affairs.[9]

The application of minimum wage rates to lay employees of the church does not affect the religious facet of the church so as to violate the constitutional clause providing that Congress shall make no law respecting the establishment of religion.[10]

Immigration law requirements.

The application of the employer verification and sanctions provisions of an immigration statute does not violate the free exercise rights of religious organizations whose members' beliefs compelled them to provide employment to persons in need without regard to residence, nationality, or immigrant status.[11]

CUMULATIVE SUPPLEMENT

Cases:

Court would have become excessively entangled with religion, in violation of Establishment Clause, by adjudicating racial and religious discrimination claims of African-American former hospital chaplain in his action against hospital, as employer, and former supervisor, and therefore application of ministerial exception doctrine was warranted, which recognized that First Amendment protected religious employers from employment discrimination lawsuits brought by their ministers, since, among other things, any jury hearing chaplain's employment discrimination and retaliation claims would have had to determine how minister should conduct religious services or provide spiritual support. U.S. Const. Amend. 1. Penn v. New York Methodist Hospital, 884 F.3d 416 (2d Cir. 2018).

Police department's interests in preserving confidential information that could jeopardize the successful conclusion of a criminal investigation justified its general order prohibiting public disclosure of such information, thus weighing against police officer's claim that imposition of punishment for his release to media, without prior authorizations, a recording of radio communications of barricade incident, which was subject of two criminal investigations, violated his First Amendment speech rights; public was not denied information about the incident, as those who were present or otherwise informed were free to discuss it publicly, and premature disclosure of recording carried clear potential for undermining the investigations since the recording could have revealed information about location, nature and timing of actions by suspect and police, which could jeopardize police

department's ability to use the recording to verify accuracy and credibility of witnesses. U.S.C.A. Const.Amend. 1. Baumann v. District of Columbia, 795 F.3d 209 (D.C. Cir. 2015).

[END OF SUPPLEMENT]

Footnotes

1 N.J.—Gallo v. Salesian Soc., Inc., 290 N.J. Super. 616, 676 A.2d 580, 109 Ed. Law Rep. 1286 (App. Div. 1996).

Employee's function determines judicial involvement

N.J.—Welter v. Seton Hall University, 128 N.J. 279, 608 A.2d 206, 75 Ed. Law Rep. 822 (1992).

2 U.S.—Cap Santa Vue, Inc. v. N. L. R. B., 424 F.2d 883 (D.C. Cir. 1970).

3 U.S.—Linscott v. Millers Falls Co., 440 F.2d 14 (1st Cir. 1971); Cooper v. General Dynamics, Convair Aerospace Division, Ft. Worth Operation, 533 F.2d 163 (5th Cir. 1976); Yott v. North American Rockwell Corp., 501 F.2d 398 (9th Cir. 1974).

A.L.R. Library

Necessity of, and What Constitutes, Employer's Reasonable Accommodation of Employee's Religious Preference Under State Law, 107 A.L.R.5th 623.

4 U.S.—N.L.R.B. v. World Evangelism, Inc., 656 F.2d 1349 (9th Cir. 1981).

Home for neglected children

U.S.—N.L.R.B. v. St. Louis Christian Home, 663 F.2d 60 (8th Cir. 1981).

Nursing home where religious atmosphere secondary

U.S.—Tressler Lutheran Home for Children v. N.L.R.B., 677 F.2d 302, 63 A.L.R. Fed. 821 (3d Cir. 1982).

5 **Lack of governmental aid; religious permeation of curriculum**

U.S.—Catholic Bishop of Chicago v. N.L.R.B., 559 F.2d 1112 (7th Cir. 1977), judgment aff'd, 440 U.S. 490, 99 S. Ct. 1313, 59 L. Ed. 2d 533 (1979).

6 N.Y.—New York State Employment Relations Bd. v. Christ the King Regional High School, 217 A.D.2d 701, 630 N.Y.S.2d 333, 102 Ed. Law Rep. 1158 (2d Dep't 1995), order aff'd, 90 N.Y.2d 244, 660 N.Y.S.2d 359, 682 N.E.2d 960, 120 Ed. Law Rep. 226 (1997).

7 U.S.—Catholic High School Ass'n of Archdiocese of New York v. Culvert, 753 F.2d 1161, 22 Ed. Law Rep. 1117 (2d Cir. 1985).

8 **Vocational training program**

U.S.—Brock v. Wendell's Woodwork, Inc., 867 F.2d 196 (4th Cir. 1989).

9 U.S.—Tony and Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290, 105 S. Ct. 1953, 85 L. Ed. 2d 278 (1985).

10 U.S.—Archbishop of Roman Catholic Apostolic Archdiocese of San Juan v. Guardiola, 628 F. Supp. 1173 (D.P.R. 1985).

11 U.S.—Intercommunity Center for Justice and Peace v. I.N.S., 910 F.2d 42 (2d Cir. 1990).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

2. Labor and Employment

§ 890. Employment discrimination; wrongful termination

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1321

Some regulation of religious institutions with respect to employment discrimination has been upheld, and an exemption for religious organizations from a statute prohibiting discrimination in employment on the basis of religion does not violate the Establishment Clause.

While the State has a strong interest in eradicating employment discrimination, courts must distinguish incidental burdens on free exercise in the service of a compelling state interest from burdens where the inroad on religious liberty is too substantial to be permissible.[1] The application of statutes granting, confirming, or protecting civil rights generally,[2] or, more specifically, barring discrimination in employment,[3] to the relationship between a church and a minister constitutes an infringement of the free exercise of religion. Under the judicially recognized "ministerial exception," courts will abstain from deciding ministerial church employees' claims of discrimination[4] or related wrongful termination claims.[5] The exception to enforcement of civil employment law is not limited to churches but extends to church-related institutions which have a substantial religious character; this includes church-affiliated schools.[6] However, there is authority that imposing statutory prohibitions of discrimination, other than those based on religion, upon a religious institution;[7] a publishing facility affiliated with a religious society;[8] or a college

owned, controlled, and operated by a religious institution;[9] or the application of reporting requirements of such a statute to nonministerial employees of a sectarian seminary[10] do not violate either the establishment or the Free Exercise Clause.

An exemption for religious organizations from a statute prohibiting discrimination in employment on the basis of religion does not violate the Establishment Clause.[11] While the construction of an exemption provision of a statute banning employment discrimination to exempt all forms of discrimination in a church operated facility would raise First Amendment problems,[12] the assertion of jurisdiction by a civil court over a sex discrimination claim against such a facility brought by a lay person does not violate the religion clauses of the First Amendment.[13]

The construction of an equal or fair employment statute which requires an employer or union to make reasonable accommodations to the religious practices of employees is not violative of state or federal constitutional provisions prohibiting the establishment of religion, as by requiring the giving of preferential treatment to members of minority sects, and thus to discriminate against other employees.[14]

CUMULATIVE SUPPLEMENT

Cases:

A religious institution's explanation of the role of its employees in the life of the religion in question is important when determining whether to apply the ministerial exception, grounded in First Amendment's Religion Clauses, to laws governing employment relationship between a religious institution and certain key employees. U.S. Const. Amend. 1. Our Lady of Guadalupe School v. Morrissey-Berru, 140 S. Ct. 2049, 207 L. Ed. 2d 870, 378 Ed. Law Rep. 614 (2020).

Although only historically connected to church, hospital employer that retained significant portion of its identity through provision of religious services through its pastoral care department could, in employment discrimination action brought by African-American former chaplain, invoke ministerial exception doctrine, which recognized that First Amendment protected religious employers from employment discrimination lawsuits brought by their ministers; hospital was "religious group," and chaplain's role within pastoral care department was to provide religious care to hospital's patients and religious care only. U.S. Const. Amend. 1. Penn v. New York Methodist Hospital, 884 F.3d 416 (2d Cir. 2018).

Court would have become excessively entangled with religion, in violation of Establishment Clause, by adjudicating racial and religious discrimination claims of African-American former hospital chaplain in his action against hospital, as employer, and former supervisor, and therefore application of ministerial exception doctrine was warranted, which recognized that First Amendment protected religious employers from employment discrimination lawsuits brought by their ministers, since, among other things, any jury hearing chaplain's employment discrimination and retaliation claims would have had to determine how minister should conduct religious services or provide spiritual support. U.S. Const. Amend. 1. Penn v. New York Methodist Hospital, 884 F.3d 416 (2d Cir. 2018).

First Amendment's ministerial exception to generally applicable employment laws did not bar former teacher's ADA claim against Catholic elementary school that terminated employment following teacher's breast cancer diagnosis, although former teacher taught religious lessons four days a week and incorporated religious themes into curriculum, as the school required; school had no religious requirements for teaching position, training consisted of only a half-day conference with limited religious substance, employment was at-will and on a yearlong renewable contract, students led class in prayers, former teacher did not have ministerial training or titles, and former teacher was not presented as minister. U.S. Const. Amend. 1; Americans with Disabilities Act of 1990 § 103, 42 U.S.C.A. § 12113(d)(1). Biel v. St. James School, 911 F.3d 603 (9th Cir. 2018).

Former Catholic school elementary teacher's claims under the ADEA and the Elliot Larsen Civil Rights Act were barred by the First Amendment's ministerial exception to employment law claims brought by ministerial employees against religious organizations, although teacher's title of "Early Childhood Teacher" did not include words "minister" or "spiritual," teacher only needed to attest to her Catholic faith, becoming a certified Catechist was not a condition of employment, and teacher did not specifically hold herself out as a minister;where teacher was engaged in two important religious functions on a daily basis, consisting of spending 20 to 30 minutes per day teaching religion and leading a daily morning prayer, and supervising children during weekly Mass. U.S. Const. Amend. 1; Age Discrimination in Employment Act of 1967 § 2 et seq., 29 U.S.C.A. § 621 et seq.; Mich. Comp. Laws Ann. § 37.2101 et seq. Ciurleo v. St. Regis Parish, 214 F. Supp. 3d 647, 342 Ed. Law Rep. 185 (E.D. Mich. 2016).

Private nondenominational Christian liberal arts college was religious institution, and thus entitled to invoke ministerial exception as defense in professor's employment discrimination action against it, even if its primary commitment was to provide liberal arts education; college's governing documents referenced religious purposes, and all members of college community, including its faculty, were expected to articulate and affirm their faith and abide by faith-based behavioral standards. DeWeese-Boyd v. Gordon College, 487 Mass. 31, 163 N.E.3d 1000 (2021).

[END OF SUPPLEMENT]

Footnotes

1 Wis.—Coulee Catholic Schools v. Labor and Industry Review Com'n, Dept. of Workforce Development, 2009 WI 88, 320 Wis. 2d 275, 768 N.W.2d 868 (2009).

2 U.S.—Simpson v. Wells Lamont Corp., 494 F.2d 490 (5th Cir. 1974).

3 U.S.—McClure v. Salvation Army, 460 F.2d 553 (5th Cir. 1972).

4 U.S.—Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C., 132 S. Ct. 694, 181 L. Ed. 2d 650, 274 Ed. Law Rep. 774 (2012); Skrzypczak v. Roman Catholic Diocese Of Tulsa, 611 F.3d 1238 (10th Cir. 2010).

N.J.—Sabatino v. Saint Aloysius Parish, 288 N.J. Super. 233, 672 A.2d 217, 107 Ed. Law Rep. 871 (App. Div. 1996).

Facilities manager at synagogue

U.S.—Davis v. Baltimore Hebrew Congregation, 985 F. Supp. 2d 701 (D. Md. 2013).

Title of commissioned minister; time spent on particular activities

Although a title of a commissioned minister, by itself, does not automatically ensure coverage under the ministerial exception, grounded in the religion clauses of the First Amendment, the fact that an employee has been ordained or commissioned as a minister is surely relevant, as is the fact that significant religious training and a recognized religious mission underlie the description of the employee's position. The amount of time an employee spends on particular activities is relevant in assessing that employee's status as a minister under the ministerial exception, but that factor cannot be considered in isolation, without regard to the nature of the religious functions performed and other considerations.

U.S.—Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C., 132 S. Ct. 694, 181 L. Ed. 2d 650, 274 Ed. Law Rep. 774 (2012).

5 **Breach of implied covenant of good faith**

D.C.—Pardue v. Center City Consortium Schools of Archdiocese of Washington, Inc., 875 A.2d 669, 199 Ed. Law Rep. 287 (D.C. 2005).

6 Cal.—Henry v. Red Hill Evangelical Lutheran Church of Tustin, 201 Cal. App. 4th 1041, 134 Cal. Rptr. 3d 15, 274 Ed. Law Rep. 631 (4th Dist. 2011).

7 U.S.—Whitney v. Greater New York Corp. of Seventh-Day Adventists, 401 F. Supp. 1363 (S.D. N.Y. 1975).

8 **Wage discrimination**

U.S.—E.E.O.C. v. Pacific Press Pub. Ass'n, 676 F.2d 1272 (9th Cir. 1982).

Ecclesiastical intra-church disputes not involved

U.S.—E.E.O.C. v. Pacific Press Pub. Ass'n, 676 F.2d 1272 (9th Cir. 1982).

9 U.S.—Equal Employment Opportunity Commission v. Mississippi College, 626 F.2d 477 (5th Cir. 1980).

10 U.S.—Equal Employment Opportunity Commission v. Southwestern Baptist Theological Seminary, 651 F.2d 277 (5th Cir. 1981).

11 **Application of exemption to secular nonprofit activities valid**

U.S.—Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos, 483 U.S. 327, 107 S. Ct. 2862, 97 L. Ed. 2d 273 (1987).

12 U.S.—King's Garden, Inc. v. F.C.C., 498 F.2d 51 (D.C. Cir. 1974).

13 **Discharge due to pregnancy**

U.S.—Dolter v. Wahlert High School, 483 F. Supp. 266 (N.D. Iowa 1980).

14 U.S.—McDaniel v. Essex Intern., Inc., 509 F. Supp. 1055 (W.D. Mich. 1981), judgment aff'd, 696 F.2d 34 (6th Cir. 1982).

Charitable payments in lieu of union dues

U.S.—Nottelson v. Smith Steel Workers D.A.L.U. 19806, AFL-CIO, 643 F.2d 445 (7th Cir. 1981); Tooley v. Martin-Marietta Corp., 648 F.2d 1239 (9th Cir. 1981).

Reassignment of functions of employee

U.S.—Haring v. Blumenthal, 471 F. Supp. 1172 (D.D.C. 1979).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

2. Labor and Employment

§ 891. Observation of Sabbath or religious holidays

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1320

A private employer cannot be required to accommodate an employee's observance of the Sabbath where it constitutes an undue hardship.

A private employer cannot be required to accommodate an employee's observance of the Sabbath where it constitutes an undue hardship.[1] Furthermore, an employee may be required to work on his or her Sabbath without a violation of the First Amendment where there would otherwise be an abrogation of the seniority rights of some employees in violation of a collective bargaining agreement.[2] In the same vein, a state statute which provides Sabbath observers with an absolute and unqualified right not to work on their Sabbath violates the Establishment Clause where it imposes on employers and employees an absolute duty to conform their business practices to the particular religious practices of an employee, where it provides no exception for special circumstances, and where it allows for no consideration as to whether the employer has made reasonable accommodation proposals.[3]

An employee may be committed to work on Sunday by a collective bargaining agreement, waiving the provisions of a statute regulating such work, where there is a compelling state interest, without violating his or her religious liberty.[4]

The loss of a day's pay for time not worked to observe a religious holiday is not a substantial pressure on the employee to modify his or her behavior and thus fails to show that the employer's leave policy violates the First Amendment.[5]

Footnotes

1 **More than de minimis costs**
U.S.—Gibson v. Missouri Pacific R.R., 620 F. Supp. 85 (E.D. Ark. 1985), dismissed, 786 F.2d 1171 (8th Cir. 1986).

2 U.S.—Johnson v. U.S. Postal Service, 364 F. Supp. 37 (N.D. Fla. 1973), judgment aff'd, 497 F.2d 128 (5th Cir. 1974); Dawson v. Mizell, 325 F. Supp. 511 (E.D. Va. 1971).

3 U.S.—Estate of Thornton v. Caldor, Inc., 472 U.S. 703, 105 S. Ct. 2914, 86 L. Ed. 2d 557 (1985).

4 **Labor peace**
U.S.—Ciba-Geigy Corp. v. Local No. 2548, United Textile Workers of America, AFL-CIO, 391 F. Supp. 287 (D.R.I. 1975).

5 U.S.—Man-of-Jerusalem v. Hill, 769 F. Supp. 97 (E.D. N.Y. 1991).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

2. Labor and Employment

§ 892. Unemployment or workers' compensation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1320

Unemployment compensation may not be denied to an employee who is unwilling, on religious grounds, to retain a particular employment, in the absence of a sufficiently compelling state interest to justify the burden imposed on religious liberty by forcing a claimant to make a choice affecting a religious precept. The designation of a church pastor as an employee for workers' compensation purposes does not violate the church congregation's right to free exercise of religion.

Benefits under an unemployment compensation scheme may not be denied, without violating religious liberty, to claimants who are precluded by their religious beliefs from accepting[1] or continuing[2] a particular employment, in the absence of a sufficiently compelling state interest to justify the burden imposed on religious liberty by forcing a claimant to make a choice affecting a religious precept.[3] Accordingly, in particular instances, unemployment compensation cannot be denied to claimants who, on religious grounds, refuse to work on Saturday[4] or Sunday,[5] or to participate in the manufacture of armaments[6] or tobacco products,[7] or to sell an alcoholic beverage.[8]

The denial of an entire week's unemployment compensation benefits to claimant who is unavailable for work for part of the week because of his or her observance of religious holidays violates claimant's right to free exercise of his or her religion.[9]

On the other hand, an employee who is discharged, and subsequently denied benefits, for misconduct connected with his or her work in violation of an express understanding on which employment was accepted,[10] or who is discharged for good reasons and who could have continued his or her employment without violating religious beliefs,[11] may not claim an infringement of religious beliefs. Furthermore, a state may, consistent with the Free Exercise Clause, deny claimants unemployment compensation benefits on the ground of misconduct for dismissal from drug counseling positions resulting from their sacramental use of peyote where ingestion of peyote is a crime under state law.[12]

A judicial ruling compelling the payment of unemployment compensation benefits, the denial of which would constitute an interference with the free exercise of religion, does not involve the State in fostering a religious faith in violation of the Establishment Clause.[13]

Workers' compensation.

The designation of a church pastor as an employee for workers' compensation purposes does not violate the church congregation's right to free exercise of religion.[14] Furthermore, a workers' compensation claimant who refuses selective employment on the ground that required Saturday work would interfere with his or her free exercise of religion is entitled to further benefits.[15]

Footnotes

1 U.S.—Sherbert v. Verner, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963).

2 Me.—Dotter v. Maine Employment Sec. Commission, 435 A.2d 1368 (Me. 1981).

3 U.S.—Thomas v. Review Bd. of Indiana Employment Sec. Division, 450 U.S. 707, 101 S. Ct. 1425, 67 L. Ed. 2d 624 (1981).

4 U.S.—Hobbie v. Unemployment Appeals Com'n of Florida, 480 U.S. 136, 107 S. Ct. 1046, 94 L. Ed. 2d 190 (1987); Sherbert v. Verner, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963).

5 U.S.—Frazee v. Illinois Dept. of Employment Sec., 489 U.S. 829, 109 S. Ct. 1514, 103 L. Ed. 2d 914 (1989).

6 U.S.—Thomas v. Review Bd. of Indiana Employment Sec. Division, 450 U.S. 707, 101 S. Ct. 1425, 67 L. Ed. 2d 624 (1981).

7 U.S.—Lincoln v. True, 408 F. Supp. 22 (W.D. Ky. 1975).

8 **Beer**
Ark.—Murphy v. Everett, 5 Ark. App. 281, 635 S.W.2d 301 (1982).

9 Cal.—Jaffe v. Unemployment Ins. Appeals Bd., 156 Cal. App. 3d 719, 202 Cal. Rptr. 812 (1st Dist. 1984).

10 **Talking to others about religion**
Me.—Flynn v. Maine Employment Sec. Com'n, 448 A.2d 905 (Me. 1982).

11 N.Y.—Carr v. Ross, 81 A.D.2d 999, 440 N.Y.S.2d 60 (3d Dep't 1981).

12 U.S.—Employment Div., Dept. of Human Resources of Oregon v. Smith, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990).

13 U.S.—Thomas v. Review Bd. of Indiana Employment Sec. Division, 450 U.S. 707, 101 S. Ct. 1425, 67 L. Ed. 2d 624 (1981); Sherbert v. Verner, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963).

14 Mont.—St. John's Lutheran Church v. State Compensation Ins. Fund, 252 Mont. 516, 830 P.2d 1271 (1992).

15 Va.—Ballweg v. Crowder Contracting Co., 247 Va. 205, 440 S.E.2d 613 (1994).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

3. Prisoners

§ 893. Prisoners as affected by constitutional guaranties of religious freedom, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1418, 1422 to 1427

Prisoners retain their rights to religious freedom under the First Amendment and may practice their religion, subject to prison requirements.

Prisoners retain their rights to religious freedom guaranteed by the First Amendment[1] and to the free exercise of religion;[2] however, such rights are not unfettered,[3] and they exist only to the extent that they may be justifiably withdrawn or limited by the requirements of the penal system.[4] It is necessary and sufficient for a prisoner to be accorded these rights that he or she have a sincere[5] religious belief.[6] Furthermore, for a prisoner to prove that the guaranty of free exercise of religious beliefs has been violated by prison authorities, he or she must prove that the conduct prohibited by the authorities was deeply rooted in religious doctrine.[7] In order to establish the validity of a restriction on free exercise rights, the State must establish the furtherance of a compelling state interest[8] and that the method used is the least restrictive means of effectuating that interest.[9] As it has otherwise been formulated, the factors relevant to determining the reasonableness of a prison regulation that allegedly impinges on a prisoner's right to exercise religious freedom are: (1) whether there is a rational relationship between the prison regulation and the governmental interest justifying it; (2) whether there are alternative means for exercising the right that are consistent with

the prison setting; (3) the extent to which accommodating the right will impact other prisoners, guards, or the allocation of prison resources; and (4) the availability of ready alternatives that could accommodate the inmate's complaint.[10]

In accordance with the First Amendment right to religious freedom, prisoners must be afforded reasonable opportunities to pursue their faith without fear of penalty;[11] the practice of religion by any particular sect may not be curtailed[12] or subject to undue discrimination.[13] At the same time, one religion may not be unduly preferred over another,[14] and prisoners may not be subjected to forced religious indoctrination.[15] However, religious privileges allowed to prison inmates need only be substantially, not literally, equivalent to privileges allowed inmates who are members of other religions.[16]

State and local governments.

The U.S. Supreme Court has upheld the constitutionality of a federal statute providing that no state or local government may impose a substantial burden on the religious exercise of a person residing in or confined to an institution unless the government shows that the burden furthers a compelling governmental interest and does so by the least restrictive means.[17]

CUMULATIVE SUPPLEMENT

Cases:

Two alleged instances of harassment of Muslim inmate by prison officers, without more, were insufficient to amount to Fifth Amendment equal protection violation under discriminatory harassment theory; officer allegedly placed Islam-offensive sticker on inmate's back, and officer allegedly shouted that "there is no good Muslim except a dead Muslim." U.S. Const. Amend. 5. Mack v. Warden Loretto FCI, 839 F.3d 286 (3d Cir. 2016).

Even assuming prisoner's religious artifact was necessary for his religious practice, prison officers had a legitimate penological interest in confiscating it, and thus prisoner's First Amendment right to free exercise of religion was not violated by confiscation of the religious artifact, where artifact contained a sharp point that was dangerous in prison setting. U.S.C.A. Const.Amend. 1. Wilkinson v. GEO Group, Inc., 617 Fed. Appx. 915 (11th Cir. 2015).

Pro se inmates, who were Muslim, failed to allege how lack of amenities, such as extra baths, additional bathing items, special clothing, razors, and compact discs, placed substantial burden on their ability to practice their faith, as required to state claim for violation of First Amendment right to religious freedom, and inmates would be required, in their amended complaint, to describe with specificity which prison officials were involved and officials' conduct in relation to such claim. U.S. Const. Amend. 1. Parson v. Phelps, 193 F. Supp. 3d 353 (D. Del. 2016).

State prison and state department of correction employees' failure to provide prisoners who practiced Nation of Islam Muslim religion with daily access to worship space was reasonably related to legitimate penological interests, and thus did not violate prisoners' right to free exercise under the First Amendment; there was rational connection between defendants' refusal to grant daily access and legitimate security concerns, prisoners could exercise their free exercise rights by engaging in individual daily worship and attending weekly services in person or by accessing televised recordings, and ordering defendants to provide prisoners with daily access would adversely affect prison resources. U.S. Const. Amend. 1. Hudson v. Spencer, 180 F. Supp. 3d 70 (D. Mass. 2015).

Incidental effects of government programs, which may make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs, do not constitute substantial burdens under RLUIPA. Religious Land Use and Institutionalized Persons Act of 2000, §§ 3(a), 8(7)(A), 42 U.S.C.A. §§ 2000cc–1(a), 2000cc–5(7)(A). LaPlante v. Massachusetts Dept. of Correction, 89 F. Supp. 3d 235 (D. Mass. 2015).

Prisoner mounting a free-exercise challenge must show at the threshold that the disputed conduct substantially burdens their sincerely held religious beliefs; the defendants then bear the relatively limited burden of identifying the legitimate penological interests that justify the impinging conduct, and once defendants carry this burden of production, the burden remains with the prisoner to show that these articulated concerns were irrational. U.S. Const. Amend. 1. K.A. v. City of New York, 413 F. Supp. 3d 282, 105 Fed. R. Serv. 3d 692 (S.D. N.Y. 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Hudson v. Palmer, 468 U.S. 517, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984); Ramsey v. Goord, 661 F. Supp. 2d 370 (W.D. N.Y. 2009).
W. Va.—State ex rel. White v. Narick, 170 W. Va. 195, 292 S.E.2d 54 (1982).
A.L.R. Library
Provision of religious facilities for prisoners, 12 A.L.R.3d 1276.
Validity, Construction, and Operation of Religious Land Use and Institutionalized Persons Act of 2000 (42 U.S.C.A. ss2000cc et seq.), 181 A.L.R. Fed. 247.
Validity, construction, application, and effect of Civil Rights of Institutionalized Persons Act, 42 U.S.C.A. secs. 1997-1997j, 93 A.L.R. Fed. 706.

2 U.S.—McFaul v. Valenzuela, 684 F.3d 564 (5th Cir. 2012); Ortiz v. Downey, 561 F.3d 664 (7th Cir. 2009); Native American Council of Tribes v. Weber, 750 F.3d 742 (8th Cir. 2014).
Mont.—Cape v. Crossroads Correctional Center, 2004 MT 265, 323 Mont. 140, 99 P.3d 171 (2004).
N.Y.—Rivera v. Smith, 63 N.Y.2d 501, 483 N.Y.S.2d 187, 472 N.E.2d 1015 (1984).

3 U.S.—Ortiz v. Downey, 561 F.3d 664 (7th Cir. 2009); Winder v. Maynard, 2 F. Supp. 3d 709 (D. Md. 2014), aff'd, 583 Fed. Appx. 286 (4th Cir. 2014).

4 U.S.—Hudson v. Palmer, 468 U.S. 517, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984).
N.J.—State v. Richardson, 130 N.J. Super. 63, 324 A.2d 914 (Law Div. 1974).
Tex.—Williams v. Lara, 52 S.W.3d 171 (Tex. 2001).
Accommodation in light of practical considerations
U.S.—Glasshofer v. Thornburgh, 514 F. Supp. 1242 (E.D. Pa. 1981), aff'd, 688 F.2d 821 (3d Cir. 1982).
Medallion prohibited as possible weapon
U.S.—Rowland v. Sigler, 327 F. Supp. 821 (D. Neb. 1971), judgment aff'd, 452 F.2d 1005 (8th Cir. 1971).
A.L.R. Library
Comment Note: Propriety of Holding Prisoner in Isolation—Federal Cases, 82 A.L.R. Fed. 2d 315.

5 U.S.—Barrett v. Com. of Va., 689 F.2d 498 (4th Cir. 1982); Ron v. Lennane, 445 F. Supp. 98 (D. Conn. 1977).

6 U.S.—Brewer v. Remmers, 419 U.S. 1012, 95 S. Ct. 332, 42 L. Ed. 2d 286 (1974); Goodvine v. Swiekatowski, 594 F. Supp. 2d 1049 (W.D. Wis. 2009).

7 U.S.—Ron v. Lennane, 445 F. Supp. 98 (D. Conn. 1977); Monroe v. Bombard, 422 F. Supp. 211 (S.D. N.Y. 1976).

8 U.S.—Burgin v. Henderson, 536 F.2d 501 (2d Cir. 1976); Cochran v. Rowe, 438 F. Supp. 566 (N.D. Ill. 1977); Loney v. Scurr, 474 F. Supp. 1186 (S.D. Iowa 1979).

9 U.S.—Cochran v. Rowe, 438 F. Supp. 566 (N.D. Ill. 1977).

10 Tex.—Williams v. Lara, 52 S.W.3d 171 (Tex. 2001).

11 U.S.—Cruz v. Beto, 405 U.S. 319, 92 S. Ct. 1079, 31 L. Ed. 2d 263 (1972).
Refusal to handle pork
U.S.—Chapman v. Kleindienst, 507 F.2d 1246 (7th Cir. 1974).

12 U.S.—O'Malley v. Brierley, 477 F.2d 785 (3d Cir. 1973).
Black Muslims
U.S.—SaMarion v. McGinnis, 253 F. Supp. 738 (W.D. N.Y. 1966).
Ministry to homosexuals

U.S.—Lipp v. Procunier, 395 F. Supp. 871 (N.D. Cal. 1975), opinion supplemented on other grounds, 402 F. Supp. 623 (N.D. Cal. 1975).

13 **Relative availability of holy books**

U.S.—Pitts v. Knowles, 339 F. Supp. 1183 (W.D. Wis. 1972), aff'd, 478 F.2d 1405 (7th Cir. 1973).

14 U.S.—Hartmann v. California Dept. of Corrections and Rehabilitation, 707 F.3d 1114 (9th Cir. 2013).

15 U.S.—Campbell v. Cauthron, 623 F.2d 503 (8th Cir. 1980).

Funding of Christian provider of inmate rehabilitation services

U.S.—Americans United for Separation of Church and State v. Prison Fellowship Ministries, Inc., 509 F.3d 406 (8th Cir. 2007).

16 U.S.—Brewer v. Remmers, 419 U.S. 1012, 95 S. Ct. 332, 42 L. Ed. 2d 286 (1974).

17 **Religious Land Use and Institutionalized Persons Act**

U.S.—Cutter v. Wilkinson, 544 U.S. 709, 125 S. Ct. 2113, 161 L. Ed. 2d 1020 (2005).

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16A C.J.S. Constitutional Law § 894

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Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

3. Prisoners

§ 894. Particular matters affecting inmates in prison

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1422, 1424 to 1426

The courts have adjudicated claims of violations of religious liberty by inmates in connection with such matters as name changes, conjugal visits, correspondence and literature, diet, education and treatment, grooming, and the use of particular substances or objects in worship.

An inmate is entitled to a court order changing his or her name for religious reasons where a denial of the petition would deprive him or her of the constitutionally protected freedom of religion.[1] Name changes by prisoners, on religious grounds, have to be recognized by prison authorities to the extent that they may not compel prisoners to respond to an old name to which they object, without violating the First Amendment,[2] and a statutory prohibition of legal recognition of religious names adopted by incarcerated persons offends the Free Exercise Clause.[3] However, a refusal by prison authorities to incorporate a prisoner's new name in their records is not violative of the prisoner's First Amendment rights.[4]

Conjugal visits.

The refusal to allow conjugal visits, based on the lack of proper facilities, does not violate religious liberty.[5]

Correspondence and literature.

In implementation of the right to religious freedom, prisoners are to be accorded the right to conduct a correspondence of a religious nature[6] and to possess religious literature.[7] However, the distribution of religious materials by prisoners may be restricted[8] if it presents a threat to the security, discipline, and good order of the prison.[9] Permitting only books of a particular religion, while prohibiting the receipt of most other reading materials, constitutes governmental encouragement or establishment of a particular religious doctrine.[10]

Diet.

The right of prisoners, under the Free Exercise Clause, to receive special food required by religious dietary laws has been recognized,[11] subject to legitimate penological interests,[12] but prison authorities are not constitutionally required to change prison routine,[13] or to permit food in the cellhouse,[14] in order to accommodate religious dietary practices, and a special diet need not be furnished upon a request the religious basis of which is insubstantial.[15]

Education or treatment programs.

Where the effect of a county's operation of a religious-education program in its jail is to endorse one religious view while excluding others, the program violates the Establishment Clause.[16]

A state prison's conditioning of prisoner eligibility for a family reunion program on participation in a prison substance abuse treatment program which incorporates the religious aspects of the 12-step treatment program violates the Establishment Clause by exercising coercive power to advance religion by denying benefits of eligibility to atheist and agnostic prisoners who refuse to participate in the program due to its religious content.[17]

Grooming.

In accommodation of religious freedom, prisoners have been accorded the right to wear beards[18] and long hair.[19] However, grooming regulations requiring prisoners to cut their hair[20] and to shave[21] have been upheld as against a contention of the violation of prisoners' First Amendment rights.

Use of particular substances or objects in worship.

The refusal to allow prisoners to use marijuana,[22] or candles and incense,[23] does not violate First Amendment guaranties. In particular circumstances, the denial of a Bible, as ignitable material, has been upheld against a challenge on First Amendment grounds.[24]

CUMULATIVE SUPPLEMENT

Cases:

In order to state a claim for violation of rights secured by the Free Exercise Clause, an inmate, as a threshold matter, must demonstrate that: (1) he holds a sincere religious belief; and (2) a prison practice or policy places a substantial burden on his ability to practice his religion. U.S. Const. Amend. 1. Greenhill v. Clarke, 944 F.3d 243 (4th Cir. 2019).

State inmate stated plausible claim for violation of his rights under Free Exercise Clause, even though he failed to name any religious belief or practice that was negatively impacted or to request return of confiscated materials, by alleging that prison officer confiscated his copies of Bible and religious books because he could take whatever he wanted whenever he wanted, that his books were destroyed, and that taking of those books had placed substantial burden on his practice of reading religious literature. U.S. Const. Amend. 1. DeMarco v. Davis, 914 F.3d 383 (5th Cir. 2019).

Genuine issue of material fact as to whether correctional officials substantially burdened state inmate's religious exercise when they participated in lockdowns precluded summary judgment on RLUIPA claim for injunctive relief. U.S.C.A. Const.Amend. 1; Religious Land Use and Institutionalized Persons Act of 2000, § 2 et seq., 42 U.S.C.A. § 2000cc et seq. Rogers v. Giurbino, 625 Fed. Appx. 779 (9th Cir. 2015).

[END OF SUPPLEMENT]

Footnotes

1 **Difficulty in obtaining criminal records**
N.J.—Application of Jackson, 177 N.J. Super. 591, 427 A.2d 139 (Law Div. 1981).

2 U.S.—Masjid Muhammad-D. C. C. v. Keve, 479 F. Supp. 1311 (D. Del. 1979).

3 U.S.—Barrett v. Com. of Va., 689 F.2d 498 (4th Cir. 1982).

4 U.S.—Barrett v. Com. of Va., 689 F.2d 498 (4th Cir. 1982); Imam Ali Abdullah Akbar v. Canney, 634 F.2d 339 (6th Cir. 1980).

5 U.S.—Polakoff v. Henderson, 370 F. Supp. 690, 71 Ohio Op. 2d 106 (N.D. Ga. 1973), judgment aff'd, 488 F.2d 977 (5th Cir. 1974).

6 U.S.—Taylor v. Sterrett, 532 F.2d 462 (5th Cir. 1976).
Approved mailing list
U.S.—O'Brien v. Blackwell, 421 F.2d 844 (5th Cir. 1970).

7 U.S.—Mukmuk v. Commissioner of Dept. of Correctional Services, 529 F.2d 272 (2d Cir. 1976); Cotton v. Lockhart, 476 F. Supp. 956 (E.D. Ark. 1979), judgment aff'd, 620 F.2d 670 (8th Cir. 1980).
Number of books restricted
Or.—Taylor v. Cupp, 29 Or. App. 585, 564 P.2d 746 (1977).
Religious newspapers
N.Y.—Powlowski v. Wullich, 81 Misc. 2d 895, 366 N.Y.S.2d 584 (Sup 1975).

8 U.S.—McLaughlin v. Cunningham, 344 F. Supp. 816 (W.D. Va. 1972).

9 U.S.—Hayes v. Tennessee, 424 Fed. Appx. 546 (6th Cir. 2011); Battle v. Anderson, 376 F. Supp. 402 (E.D. Okla. 1974), judgment aff'd in part, rev'd in part on other grounds, 993 F.2d 1551 (10th Cir. 1993).

10 U.S.—Parnell v. Waldrep, 511 F. Supp. 764 (W.D. N.C. 1981).

11 U.S.—Wall v. Wade, 741 F.3d 492 (4th Cir. 2014); Williams v. King, 2014 WL 3925230 (S.D. N.Y. 2014), order clarified, 2014 WL 4670866 (S.D. N.Y. 2014).
Kosher food for Jews
U.S.—Kahane v. Carlson, 527 F.2d 492 (2d Cir. 1975).
Pork-free diet for Muslims
U.S.—Barnett v. Rodgers, 410 F.2d 995 (D.C. Cir. 1969).
Pretrial detainee
U.S.—Parkell v. Morgan, 917 F. Supp. 2d 328 (D. Del. 2013).

12 U.S.—Lewis v. Zon, 920 F. Supp. 2d 379 (W.D. N.Y. 2013), appeal dismissed, 2nd Cir. 13-4822(Jan. 13, 2014); Potts v. Holt, 13 F. Supp. 3d 445 (M.D. Pa. 2014).

13 U.S.—Clark v. Wolff, 347 F. Supp. 887 (D. Neb. 1972), judgment aff'd, 468 F.2d 252 (8th Cir. 1972).

14 U.S.—Cochran v. Sielaff, 405 F. Supp. 1126 (S.D. Ill. 1976).

15 U.S.—Africa v. Com. of Pa., 662 F.2d 1025 (3d Cir. 1981).

Fish and unleavened bread for Catholic inmate

Mont.—Cape v. Crossroads Correctional Center, 2004 MT 265, 323 Mont. 140, 99 P.3d 171 (2004).

16 Tex.—Williams v. Lara, 52 S.W.3d 171 (Tex. 2001).

17 **No secular program offered as substitute**

N.Y.—Griffin v. Coughlin, 88 N.Y.2d 674, 649 N.Y.S.2d 903, 673 N.E.2d 98 (1996).

18 N.Y.—Ortiz v. Ward, 87 Misc. 2d 307, 384 N.Y.S.2d 960 (Sup 1976).

Beard commenced after incarceration

U.S.—Monroe v. Bombard, 422 F. Supp. 211 (S.D. N.Y. 1976).

U.S.—Maguire v. Wilkinson, 405 F. Supp. 637 (D. Conn. 1975).

Orthodox Jew

U.S.—Moskowitz v. Wilkinson, 432 F. Supp. 947 (D. Conn. 1977).

Sunni Muslim

U.S.—Monroe v. Bombard, 422 F. Supp. 211 (S.D. N.Y. 1976).

19 U.S.—Gallahan v. Hollyfield, 516 F. Supp. 1004 (E.D. Va. 1981), order aff'd, 670 F.2d 1345 (4th Cir. 1982).

Long braided hair

U.S.—Teterud v. Burns, 522 F.2d 357 (8th Cir. 1975).

20 U.S.—Proffitt v. Ciccone, 506 F.2d 1020 (8th Cir. 1974).

Removal of dreadlocks

U.S.—Lewis v. Sternes, 712 F.3d 1083 (7th Cir. 2013).

21 U.S.—Brooks v. Wainwright, 428 F.2d 652 (5th Cir. 1970); Jihaad v. O'Brien, 645 F.2d 556 (6th Cir. 1981).

22 Okla.—L'Aquarius v. Maynard, 1981 OK 115, 634 P.2d 1310 (Okla. 1981).

23 U.S.—Childs v. Duckworth, 509 F. Supp. 1254 (N.D. Ind. 1981), judgment aff'd, 705 F.2d 915 (7th Cir. 1983).

24 U.S.—Davis v. Schmidt, 57 F.R.D. 37 (W.D. Wis. 1972).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

3. Prisoners

§ 895. Particular matters affecting inmates in prison —Attendance at religious services; chaplains

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1422, 1427

Prisoners must be accorded an opportunity to attend religious service in prison unless a state interest compels the denial of such attendance. However, the First Amendment does not require a state department of corrections to provide inmates with a paid, full-time chaplain of their choice.

In order to implement the free exercise of religion by prisoners, they must be accorded an opportunity to attend religious service in prison,[1] unless a state interest compels the denial of such attendance,[2] but prisoners may be constitutionally denied permission to attend religious functions outside the prison.[3] Furthermore, attendance at religious services in prisons may be limited by prison authorities to those prisoners who actively practice a religion,[4] and it is constitutionally permissible to deny access to general prison religious services to prisoners who are segregated from the general prison population[5] such as pretrial detainees, under some,[6] but not all,[7] circumstances, or prisoners who are dangerous and are kept under maximum security,[8] or who are subject to the death penalty.[9] On the other hand, it has been held that participation in religious prison services may not be

denied to all prisoners in segregated confinement[10] and that prison authorities are obliged to make some discriminations among segregated inmates.[11]

Chaplains.

Provisions for chaplains in penal institutions do not violate the Establishment Clause, whether provided in state[12] or federal[13] prisons, and do not violate state constitutional provisions.[14] The First Amendment does not require a state department of corrections to provide inmates with a paid, full-time chaplain of their choice.[15] The absence of a chaplain of a particular religion does not constitute a violation of First Amendment rights.[16] Clergymen do not have an absolute constitutional right to enter a prison and to practice their religious profession therein,[17] and their visits to a prison may be constitutionally subject to restrictions.[18] The use of a prison chaplain to review all religious items which enter the prison through the mails has been upheld.[19]

The failure to permit protective custody inmates to have "truly private meetings" with their spiritual advisors denied the inmates a reasonable opportunity to exercise their religious freedom.[20]

CUMULATIVE SUPPLEMENT

Cases:

Accommodation that Muslim inmates sought, i.e., permission to hold unsupervised religious services, would have adverse impact on other inmates and prison staff and on allocation of prison resources, weighing in favor of finding that prison policy requiring religious activities of more than four inmates to be supervised by prison chaplain or guard or have an outside volunteer in attendance did not violate First Amendment's Free Exercise Clause; if Muslim inmates were accommodated and other religious groups were not, Islam could appear to be favored over the others, prison did not have staff to provide more than one hour of directly supervised religious activities to all inmates, and there was no evidence that prohibiting volunteers in the prison would free sufficient time for prison employees to provide supervision. U.S. Const. Amend. 1. Brown v. Collier, 929 F.3d 218 (5th Cir. 2019), as revised, (July 5, 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Mitchell v. Untreiner, 421 F. Supp. 886 (N.D. Fla. 1976); Uduko v. Cozzens, 975 F. Supp. 2d 750 (E.D. Mich. 2013); Williams v. King, 2014 WL 3925230 (S.D. N.Y. 2014), order clarified, 2014 WL 4670866 (S.D. N.Y. 2014).
Arbitrary restriction of attendance
U.S.—O'Bryan v. Saginaw County, Mich., 437 F. Supp. 582 (E.D. Mich. 1977), judgment entered, 446 F. Supp. 436 (E.D. Mich. 1978).

2 U.S.—Hodges v. Klein, 421 F. Supp. 1224 (D.N.J. 1976), judgment aff'd, 562 F.2d 276 (3d Cir. 1977).
Attendance of Muslims at Friday services precluded
U.S.—O'Lone v. Estate of Shabazz, 482 U.S. 342, 107 S. Ct. 2400, 96 L. Ed. 2d 282 (1987).
Preventing instigation of trouble
U.S.—LaReau v. MacDougall, 473 F.2d 974 (2d Cir. 1972).
Other opportunities to participate

A captain did not act in objectively unreasonable manner by refusing to permit a Muslim inmate to attend his religious service after being strip searched for allegedly creating a disturbance while waiting for the service to begin since the inmate had opportunities to participate in other religious observances of his faith.
U.S.—McCreary v. Richardson, 738 F.3d 651 (5th Cir. 2013), as revised, (Oct. 9, 2013) and redesignated as opinion and publication ordered, (Dec. 10, 2013).

3 N.J.—State v. Richardson, 130 N.J. Super. 63, 324 A.2d 914 (Law Div. 1974).

4 U.S.—Cochran v. Sielaff, 405 F. Supp. 1126 (S.D. Ill. 1976).

Jewish religious services

U.S.—Peek v. Ciccone, 288 F. Supp. 329 (W.D. Mo. 1968).

5 U.S.—Arsberry v. Sielaff, 586 F.2d 37 (7th Cir. 1978).

6 U.S.—Giampetruzzi v. Malcolm, 406 F. Supp. 836 (S.D. N.Y. 1975).

7 U.S.—Wilson v. Beame, 380 F. Supp. 1232 (E.D. N.Y. 1974).

8 U.S.—Sharp v. Sigler, 277 F. Supp. 963 (D. Neb. 1967), judgment aff'd, 408 F.2d 966 (8th Cir. 1969).

9 U.S.—Otey v. Best, 680 F.2d 1231 (8th Cir. 1982).

10 U.S.—Leon v. Harris, 489 F. Supp. 221 (S.D. N.Y. 1980).

11 U.S.—LaReau v. MacDougall, 473 F.2d 974 (2d Cir. 1972).

12 U.S.—Remmers v. Brewer, 361 F. Supp. 537 (S.D. Iowa 1973), judgment aff'd, 494 F.2d 1277 (8th Cir. 1974).
Iowa—Rudd v. Ray, 248 N.W.2d 125 (Iowa 1976).

13 U.S.—Theriault v. Silber, 547 F.2d 1279 (5th Cir. 1977).

14 Iowa—Rudd v. Ray, 248 N.W.2d 125 (Iowa 1976).

15 U.S.—Hartmann v. California Dept. of Corrections and Rehabilitation, 707 F.3d 1114 (9th Cir. 2013).

16 U.S.—Gittlemacker v. Prasse, 428 F.2d 1 (3d Cir. 1970).

17 U.S.—O'Malley v. Brierley, 477 F.2d 785 (3d Cir. 1973).

18 U.S.—Fallis v. U.S., 476 F.2d 619 (5th Cir. 1973).

19 **Screening of mail upheld, but stamping unconstitutional**

U.S.—Williams v. Warden, Federal Correctional Inst., Danbury, Conn., 470 F. Supp. 1123 (D. Conn. 1979).

20 U.S.—Griffin v. Coughlin, 743 F. Supp. 1006 (N.D. N.Y. 1990).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

3. Prisoners

§ 896. Probation and parole

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1417, 1418

Certain conditions upon the grant of probation have been struck down as violative of the First Amendment. The Establishment Clause is not violated by a system whereby clergymen are involved in the parole process.

A condition upon the grant of probation that a person submit himself or herself to a course advocating a religion or a particular religion violates the First Amendment.[1]

A probation condition limiting access to a place of worship is proper where only conduct or action is being regulated and not the freedom to worship.[2]

A probation condition requiring participation in a sex-offender treatment program that defendant claims is contrary to his or her religious beliefs does not violate the First Amendment where the condition is related to defendant's crime and future criminality and is not overly restrictive of defendant's autonomy.[3] However, a special condition of supervised release barring a defendant from possessing sexually suggestive materials has been struck down as overbroadunder the circumstances.[4]

The enforcement of a probation condition requiring the probationer to seek gainful employment so that he or she can pay restitution to his or her victims does not interfere with the probationer's right to free exercise of religion even though the probationer desires to become an unpaid missionary.[5]

An exception to a probation condition prohibiting the possession of firearms will not be made for the use of firearms in a tribal hunt.[6]

Parole.

The Establishment Clause is not violated by a system whereby clergymen are involved in the parole process[7] and are allowed to submit oral or written reports to a parole review committee.[8]

Footnotes

1 U.S.—Owens v. Kelley, 681 F.2d 1362 (11th Cir. 1982).

2 Mich.—People v. Branson, 138 Mich. App. 455, 360 N.W.2d 614 (1984).

3 Vt.—State v. Emery, 156 Vt. 364, 593 A.2d 77 (1991).

4 U.S.—U.S. v. Zobel, 696 F.3d 558 (6th Cir. 2012), cert. denied, 134 S. Ct. 157, 187 L. Ed. 2d 110 (2013).

5 U.S.—U.S. v. Myers, 864 F. Supp. 794 (N.D. Ill. 1994).

6 **Regardless if religious right of passage**
U.S.—U.S. v. Juvenile No. 1 (LWQ), 38 F.3d 470 (9th Cir. 1994).

7 U.S.—Brewer v. Remmers, 419 U.S. 1012, 95 S. Ct. 332, 42 L. Ed. 2d 286 (1974).

8 U.S.—Remmers v. Brewer, 361 F. Supp. 537 (S.D. Iowa 1973), judgment aff'd, 494 F.2d 1277 (8th Cir. 1974).

16A C.J.S. Constitutional Law § 897

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

4. Taxation

§ 897. Taxation as affected by constitutional guaranties of religious freedom, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1385, 1386(1), 1386(2)

The taxation of religion or of the exercise of religious freedom constitutes a coercive burden on the free exercise of religion. Exemptions from taxation on religious grounds are not violative of the First Amendment.

The taxation of religion,[1] or a tax laid specifically on the exercise of religious freedom[2] is inherently unconstitutional as a coercive burden on the free exercise of religion. The Establishment Clause of the First Amendment was designed as a bulwark against such a potential abuse of governmental power as the employment of the taxing power to aid one religion in preference to another or to aid religion in general,[3] and it operates as a specific constitutional limitation upon the exercise of the taxing power.[4] Nevertheless, religious societies do not enjoy a general immunity from the imposition of property taxes under the First Amendment.[5] The taxation of religious organizations is permissible under the Free Exercise Clause,[6] and a general uniform nondiscriminatory property tax for revenue purposes imposed on all property alike, real or personal, regardless of its use, is not invalid, as applied to literature of a religious organization.[7]

The collection of tax revenues for expenditures that offend the religious beliefs of individual taxpayers does not violate the Free Exercise Clause.[8]

Sales tax.

The imposition of sales tax on retail sales by a religious organization does not burden the free exercise of religion.[9] Furthermore, a state's imposition of sales and use tax liability on a religious organization for the distribution of religious materials does not violate the Establishment Clause even if the tax imposes administrative and record-keeping burdens on the organization.[10] However, where the method of imposing such a sales tax causes it to be held a privilege or occupation tax, it is a First Amendment violation.[11]

A state or local government is not required by the Free Exercise Clause to exempt religious organizations from sales and use taxes.[12] In order for a sales tax exemption to comply with the Establishment Clause, it must serve a broad secular purpose.[13] A sales tax exemption for periodicals published or distributed by a religious faith and consisting wholly of writings promulgating the teaching of the faith violates the Establishment clause.[14]

Excise tax.

Imposition of an excise tax on the use of Bibles, books, and other reading materials does not violate a church's right to freedom of the press where the tax does not target any small groups of publishers, either directly or indirectly.[15]

CUMULATIVE SUPPLEMENT

Cases:

Speech of sergeant in county sheriff's office at union meeting was speech as a citizen, as required for such speech to be protected under First Amendment; sergeant's job duties did not include acting in capacity of union member. U.S.C.A. Const.Amend. 1. Boulton v. Swanson, 795 F.3d 526 (6th Cir. 2015).

Stormwater fee, which was properly categorized as an excise tax, that city assessed on religious congregation's properties was based on a neutral law of general applicability, and thus the state constitution's free-exercise clause did not preclude the city ordinance establishing the fee. Md. Const. Declaration of Rights, art. 36. Congregation v. Mayor and City Council of Baltimore, 237 Md. App. 102, 183 A.3d 845 (2018).

[END OF SUPPLEMENT]

Footnotes

1 Wis.—Kollasch v. Adamany, 99 Wis. 2d 533, 299 N.W.2d 891 (Ct. App. 1980), judgment rev'd on other grounds, 104 Wis. 2d 552, 313 N.W.2d 47 (1981).

2 U.S.—Murdock v. Com. of Pennsylvania, 319 U.S. 105, 63 S. Ct. 870, 87 L. Ed. 1292, 146 A.L.R. 81 (1943).

3 U.S.—Flast v. Cohen, 392 U.S. 83, 88 S. Ct. 1942, 20 L. Ed. 2d 947 (1968).

4 U.S.—Flast v. Cohen, 392 U.S. 83, 88 S. Ct. 1942, 20 L. Ed. 2d 947 (1968).

5 Ga.—Leggett v. Macon Baptist Ass'n, Inc., 232 Ga. 27, 205 S.E.2d 197 (1974).

6 N.Y.—People v. Life Science Church, 113 Misc. 2d 952, 450 N.Y.S.2d 664 (Sup 1982).

7 U.S.—Watchtower Bible & Tract Soc. v. Los Angeles County, 181 F.2d 739 (9th Cir. 1950).
Cal.—Watchtower Bible & Tract Soc. v. Los Angeles County, 30 Cal. 2d 426, 182 P.2d 178 (1947).

8 U.S.—Jenkins v. C.I.R., 483 F.3d 90 (2d Cir. 2007).

9 Ky.—International Soc. for Krishna Consciousness, Inc. v. Com. ex rel. Carpenter, 610 S.W.2d 910 (Ky. Ct. App. 1980).

10 U.S.—Jimmy Swaggart Ministries v. Board of Equalization of California, 493 U.S. 378, 110 S. Ct. 688, 107 L. Ed. 2d 796 (1990).

11 Cal.—Institute In Basic Youth Conflicts, Inc. v. State Bd. of Equalization, 166 Cal. App. 3d 1093, 213 Cal. Rptr. 98 (2d Dist. 1985).

12 Colo.—Catholic Health Initiatives Colorado v. City of Pueblo, Dept. of Finance, 207 P.3d 812 (Colo. 2009), as modified on denial of reh'g, (June 1, 2009).

13 Colo.—Catholic Health Initiatives Colorado v. City of Pueblo, Dept. of Finance, 207 P.3d 812 (Colo. 2009), as modified on denial of reh'g, (June 1, 2009).

14 U.S.—Texas Monthly, Inc. v. Bullock, 489 U.S. 1, 109 S. Ct. 890, 103 L. Ed. 2d 1 (1989).
"Holy Bibles"
U.S.—Finlator v. Powers, 902 F.2d 1158 (4th Cir. 1990).

15 Iowa—Hope Evangelical Lutheran Church v. Iowa Dept. of Revenue and Finance, 463 N.W.2d 76 (Iowa 1990).

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16A C.J.S. Constitutional Law § 898

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Constitutional Law
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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

4. Taxation

§ 898. Income tax

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1385, 1386(1)

Income tax which is levied uniformly against all persons is neutral as to religion and does not violate the Free Exercise Clause.

Income tax which is levied uniformly against all persons is neutral as to religion and does not violate the Free Exercise Clause[1] notwithstanding that revenue derived from the tax is used for purposes which violate religious beliefs.[2] As long as exemptions from income tax are denied to religious organizations on a nondiscriminatory basis, using specific guidelines, and without entering into any subjective inquiry into the merits of religious doctrine, it is permissible under the First Amendment.[3]

It is generally a violation of the Establishment Clause to grant tax credits to parents of students attending nonpublic schools,[4] but particular statutory provisions which grant tax credits for donations to school tuition organizations,[5] or which in effect grant deductions for expenses incurred due to church related school attendance,[6] have been upheld. The denial of a deduction from gross income as charitable contributions for purposes of taxation of expenses incurred due to attendance at church related schools,[7] or of payments to a church educational fund for the support of schools,[8] does not violate the Free Exercise Clause.

However, the Internal Revenue Service can reject otherwise valid claims of religious benefit for charitable deduction purposes only on the ground that the taxpayers' alleged beliefs are not sincerely held, not on the ground that such beliefs are inherently irreligious.[9]

A requirement that a church withhold an amount from the income paid its employees for income tax is not in conflict with the First Amendment.[10]

Footnotes

1 U.S.—Graves v. C. I. R., 579 F.2d 392 (6th Cir. 1978).
Taxpayer must show substantial burden on exercise of religion
U.S.—Bennett-Bey v. Shulman, 688 F. Supp. 2d 7 (D.D.C. 2010), order aff'd, 404 Fed. Appx. 509 (D.C. Cir. 2010).
Incidental effect not fatal
U.S.—Johnson v. U.S., 422 F. Supp. 958 (N.D. Ind. 1976), judgment aff'd, 550 F.2d 1239 (7th Cir. 1977).
Indirect burden
U.S.—Hearde v. C. I. R., 421 F.2d 846 (9th Cir. 1970).
Higher rates for married persons
U.S.—Johnson v. U.S., 422 F. Supp. 958 (N.D. Ind. 1976), judgment aff'd, 550 F.2d 1239 (7th Cir. 1977).

2 U.S.—Graves v. C. I. R., 579 F.2d 392 (6th Cir. 1978); Autenrieth v. U.S., 279 F. Supp. 156 (N.D. Cal. 1968), judgment aff'd, 418 F.2d 586 (9th Cir. 1969); U.S. v. Haworth, 386 F. Supp. 1099 (S.D. N.Y. 1974).
Enforcement of summons
U.S.—U.S. v. Harper, 397 F. Supp. 983 (E.D. Pa. 1975).

3 U.S.—Parker v. C.I.R., 365 F.2d 792 (8th Cir. 1966).

4 U.S.—Larkin v. Minnesota Civil Liberties Union, 421 U.S. 988, 95 S. Ct. 1991, 44 L. Ed. 2d 477 (1975); Quast v. Minnesota Civil Liberties Union, 421 U.S. 988, 95 S. Ct. 1991, 44 L. Ed. 2d 477 (1975); Committee For Public Ed. and Religious Liberty v. Nyquist, 413 U.S. 756, 93 S. Ct. 2955, 37 L. Ed. 2d 948 (1973).

5 Ariz.—Kotterman v. Killian, 193 Ariz. 273, 972 P.2d 606, 132 Ed. Law Rep. 938 (1999).

6 **Textbooks**
U.S.—Mueller v. Allen, 463 U.S. 388, 103 S. Ct. 3062, 77 L. Ed. 2d 721, 11 Ed. Law Rep. 763 (1983).
Tuition and textbooks
U.S.—Luthens v. Bair, 788 F. Supp. 1032, 74 Ed. Law Rep. 1140 (S.D. Iowa 1992).

7 U.S.—Haak v. U.S., 451 F. Supp. 1087 (W.D. Mich. 1978).

8 U.S.—Winters v. C. I. R., 468 F.2d 778, 33 A.L.R. Fed. 368 (2d Cir. 1972).

9 U.S.—Hernandez v. C.I.R., 490 U.S. 680, 109 S. Ct. 2136, 104 L. Ed. 2d 766 (1989).

10 U.S.—Eighth St. Baptist Church, Inc. v. U.S., 291 F. Supp. 603 (D. Kan. 1968), judgment aff'd, 431 F.2d 1193 (10th Cir. 1970).

16A C.J.S. Constitutional Law § 899

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

4. Taxation

§ 899. Social security taxation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1385, 1386

Various matters have been adjudicated pertaining to social security taxation as it relates to freedom of religion.

Compulsory participation in the Social Security system for old age benefits interferes with the free exercise of religion rights of members of a religious society whose religious beliefs are violated by the payment of Social Security taxes and the receipt of benefits from such source.[1] Although the Social Security system may interfere with free exercise rights, the imposition of Social Security taxes on persons who object on religious grounds to receipt of public insurance benefits and to payment of taxes to support public insurance funds is not an unconstitutional violation of the Free Exercise Clause because of overriding governmental interests.[2] Application of the Social Security tax scheme to religious organizations also does not violate the Establishment Clause.[3]

A statutory exemption from the payment of the self-employment tax for persons who oppose the acceptance of the benefits of any private and public insurance and who meet other qualifications does not violate the Establishment Clause[4] or the Free Exercise Clause.[5] The interference with the Free Exercise Clause resulting from the imposition of the self-employment tax due to a failure to file a timely application for the exemption is justified by the government's need both for revenues to support

current Social Security benefits and its need for administrative certainty in determining who are members of the system both for determining revenues and benefits.[6] The free exercise of religion does not require that an employer whose religious beliefs oppose the payment of Social Security taxes be provided with an exemption from the payment of such taxes on his or her behalf and on account of the wages of his or her employees.[7]

Footnotes

1 U.S.—U.S. v. Lee, 455 U.S. 252, 102 S. Ct. 1051, 71 L. Ed. 2d 127 (1982).

2 U.S.—U.S. v. Lee, 455 U.S. 252, 102 S. Ct. 1051, 71 L. Ed. 2d 127 (1982); Bethel Baptist Church v. U.S., 822 F.2d 1334 (3d Cir. 1987).

3 U.S.—Bethel Baptist Church v. U.S., 822 F.2d 1334 (3d Cir. 1987).

4 U.S.—Jaggard v. C. I. R., 582 F.2d 1189 (8th Cir. 1978); Hatcher v. C. I. R., 688 F.2d 82 (10th Cir. 1979); Varga v. U.S., 467 F. Supp. 1113 (D. Md. 1979), aff'd, 618 F.2d 106 (4th Cir. 1980).

5 U.S.—Varga v. U.S., 467 F. Supp. 1113 (D. Md. 1979), aff'd, 618 F.2d 106 (4th Cir. 1980).

6 U.S.—Olsen v. C.I.R., 709 F.2d 278 (4th Cir. 1983).

7 U.S.—U.S. v. Lee, 455 U.S. 252, 102 S. Ct. 1051, 71 L. Ed. 2d 127 (1982).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

4. Taxation

§ 900. Unemployment insurance contributions

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1385, 1386

Exemptions may be granted from unemployment compensation contribution requirements to churches and church related organizations without violating the Establishment Clause.

Exemptions may be granted from unemployment compensation contribution requirements to churches and church related organizations without violating the Establishment Clause,[1] but an exemption for schools which are operated by a church organization has been deemed to violate the Free Exercise Clause.[2] A statute excluding from unemployment insurance coverage persons performing duties of a religious nature at a place of worship has been held not violative of the Establishment Clause.[3] Furthermore, the exclusion of a particular organization from the exemption which is available to churches does not violate the Establishment Clause[4] or the Free Exercise Clause[5] of the First Amendment, or a state constitutional provision proscribing any preference for a religious denomination or mode of worship.[6]

Footnotes

1 U.S.—Von Stauffenberg v. District Unemployment Compensation Bd., 459 F.2d 1128 (D.C. Cir. 1972).
D.C.—Konecny v. District of Columbia Dept. of Employment Services, 447 A.2d 31 (D.C. 1982).

2 Pa.—Christian School Ass'n of Greater Harrisburg v. Com., Dept. of Labor and Industry, 55 Pa. Commw. 555, 423 A.2d 1340 (1980).

3 **School operated by religious organization**
N.Y.—Claim of Klein, 78 N.Y.2d 662, 578 N.Y.S.2d 498, 585 N.E.2d 809, 72 Ed. Law Rep. 306 (1991).

4 Colo.—Young Life v. Division of Employment and Training, 650 P.2d 515 (Colo. 1982).

5 Colo.—Young Life v. Division of Employment and Training, 650 P.2d 515 (Colo. 1982).

6 Colo.—Young Life v. Division of Employment and Training, 650 P.2d 515 (Colo. 1982).

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

4. Taxation

§ 901. Exemption from taxation, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1386(2)

Exemptions from taxation on religious grounds are not violative of the First Amendment.

The grant of an exemption from taxation, such as a property tax, is not an attempt to establish, sponsor, or support religion,[1] or an interference with its free exercise,[2] although a waiver of a requirement for a tax exemption which serves to favor one religious group, without a secular purpose, or which advances its cause, may constitute a violation of the Establishment Clause.[3] A property tax exemption for a religious institution that uses money for the support of retired members of the clergy does not violate a state constitutional provision precluding compulsion to support a minister.[4]

Generally, a tax exemption will comply with the Establishment Clause when it sets forth broad secular standards, which either charitable or religious organizations may satisfy.[5] A statutory provision withholding a tax exempt status from religious organizations which do not qualify therefor does not infringe the free exercise of religion.[6] Furthermore, the denial of tax-exempt status to an educational institution which practices racial discrimination as a matter of religious belief does not constitute an impermissible burden on the free exercise of religion[7] or violate the Establishment Clause of the First Amendment.[8]

The First Amendment does not prohibit a state's requirement that a religious organization comply with state statutes which reasonably prescribe the procedure to obtain an exemption from state taxation.[9] Furthermore, a determination of state and county taxing authorities that a church's bookstore cafe and fitness center are not operated exclusively for religious purposes and thus do not entirely qualify for a property tax exemption does not entangle the government in matters of church doctrine in violation of the Establishment Clause.[10]

Footnotes

1 U.S.—Walz v. Tax Commission of City of New York, 397 U.S. 664, 90 S. Ct. 1409, 25 L. Ed. 2d 697 (1970); U.S. v. Dykema, 666 F.2d 1096 (7th Cir. 1981).
N.H.—Appeal of Emissaries of Divine Light, 140 N.H. 552, 669 A.2d 802 (1995).
Homes for aged
Fla.—Johnson v. Presbyterian Homes of Synod of Fla., Inc., 239 So. 2d 256 (Fla. 1970).
Schools
Ill.—Cecrle v. Illinois Educational Facilities Authority, 52 Ill. 2d 312, 288 N.E.2d 399 (1972).

2 U.S.—Walz v. Tax Commission of City of New York, 397 U.S. 664, 90 S. Ct. 1409, 25 L. Ed. 2d 697 (1970).

3 **Involvement in abortion controversy**
U.S.—Abortion Rights Mobilization, Inc. v. Regan, 544 F. Supp. 471 (S.D. N.Y. 1982).

4 Tenn.—Book Agents of Methodist Episcopal Church, South v. State Bd. of Equalization, 513 S.W.2d 514 (Tenn. 1974).

5 Colo.—Catholic Health Initiatives Colorado v. City of Pueblo, Dept. of Finance, 207 P.3d 812 (Colo. 2009), as modified on denial of reh'g, (June 1, 2009).

6 **Property leased for profit**
N.Y.—Sisters of St. Joseph v. City of New York, 49 N.Y.2d 429, 426 N.Y.S.2d 444, 403 N.E.2d 150 (1980).
Influencing legislation
Withholding tax exempt status from religious organization engaged in substantial activity intended to influence legislation does not infringe right of free exercise of religion.
U.S.—Christian Echoes Nat. Ministry, Inc. v. U.S., 470 F.2d 849 (10th Cir. 1972).

7 U.S.—Bob Jones University v. U.S., 461 U.S. 574, 103 S. Ct. 2017, 76 L. Ed. 2d 157, 10 Ed. Law Rep. 918 (1983).

8 U.S.—Bob Jones University v. U.S., 461 U.S. 574, 103 S. Ct. 2017, 76 L. Ed. 2d 157, 10 Ed. Law Rep. 918 (1983).

9 Neb.—Indian Hills Community Church v. County Bd. of Equalization of Lancaster County, 226 Neb. 510, 412 N.W.2d 459 (1987).

10 Tenn.—Christ Church Pentecostal v. Tennessee State Bd. of Equalization, 428 S.W.3d 800 (Tenn. Ct. App. 2013), appeal denied, (Aug. 27, 2013).

16A C.J.S. Constitutional Law § 902

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

5. Other Particular Subjects

§ 902. Domestic relations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1391, 1405, 1406, 1408 to 1410

As against a claim of religious liberty, the family itself is not beyond regulation in the public interest.

As against a claim of religious liberty, the family itself is not beyond regulation in the public interest.[1] The State has power to limit parental freedom and authority as to matters of conscience and religious conviction,[2] and in acting to guard the general interest in a youth's well being, its authority is not nullified merely because the parent grounds his or her claim to control the child's course of conduct on religion or conscience.[3]

Although parents have a constitutionally protected interest in directing the rearing and religious upbringing of their children,[4] their religious convictions cannot interfere with the responsibility of the state to protect the welfare of children,[5] and so, the exercise of a parent's religious convictions as to the rearing of his or her children can be subordinated to the interest of the state in their welfare.[6] The State may accordingly regulate or prohibit sales by minors,[7] penalize those who permit such minors to sell,[8] and prohibit the furnishing of articles to be sold by minors.[9] However, while a court may fashion an order aimed at protecting a child from an immediate and substantial threat to the child's temporal well-being posed by particular religious

practices, the court must narrowly tailor its order so as to result in the least possible intrusion upon the constitutionally protected interests of the parent.[10]

The duty of an individual to provide for the support of his wife[11] and children[12] supersedes his First Amendment right to engage in the practice of his religious belief. Laws prohibiting bigamy and polygamy do not violate the constitutional guaranty of religious liberty and freedom of conscience,[13] nor does the constitutional guaranty render void a statute requiring male persons applying for a marriage license to file with the clerk a certificate stating that they are free from acquired venereal disease.[14] The right to have a marriage solemnized by a minister of one's own faith is an incident of the constitutional guaranty of freedom of religious worship.[15] A requirement that responsible relatives pay the cost of treatment of an indigent in a public facility does not interfere with their right to hold particular religious beliefs.[16]

A religiously affiliated child welfare agency may file parental termination rights.[17]

A statute requiring a standard serological test before a license for marriage will be issued was held not to violate the Free Exercise Clause of the First Amendment.[18]

Adoption; foster care placement.

A requirement that in adoption, custody be given to persons of the same religious faith as the child, or in accord with a parental preference, has been upheld,[19] and this rule has been applied to foster care placements.[20] However, action of a court, although advancing the best interests of the child, in burdening the opportunity to adopt with religious requirements is a violation of the religious liberty guaranties.[21]

Furthermore, it has been held that a parent has no unfettered free exercise right to have his or her child placed in a child care program of a particular religious orientation.[22]

When a child is placed in foster care a parent's right to control the child's religious training is no longer absolute.[23]

Parentage determination.

The interests of the state and of minor children prevail over the religious beliefs of a putative father insofar as those beliefs militate against the withdrawal of his or her blood for the purpose of testing parentage.[24]

CUMULATIVE SUPPLEMENT

Cases:

Conditioning by Department of Children and Families of applicants' opportunity to be foster parents on their willingness to forsake a sincerely held religious belief in use of corporal punishment as a form of discipline substantially burdened applicants' sincerely held religious belief. M.G.L.A. Const. Pt. 1, Art. 46, § 1. Magazu v. Department of Children and Families, 42 N.E.3d 1107 (Mass. 2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Prince v. Massachusetts, 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944).

2 U.S.—Prince v. Massachusetts, 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944).
Pa.—Com. v. Beiler, 168 Pa. Super. 462, 79 A.2d 134 (1951).

3 U.S.—Prince v. Massachusetts, 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944).

4 U.S.—Valencia v. Blue Hen Conference, 476 F. Supp. 809 (D. Del. 1979), aff'd, 615 F.2d 1355 (3d Cir. 1980).
N.Y.—Dickens v. Ernesto, 37 A.D.2d 102, 322 N.Y.S.2d 581 (4th Dep't 1971), order aff'd, 30 N.Y.2d 61, 330 N.Y.S.2d 346, 281 N.E.2d 153 (1972).

5 N.Y.—People on Complaint of Shapiro v. Dorin, 199 Misc. 643, 99 N.Y.S.2d 830 (Dom. Rel. Ct. 1950), judgment aff'd, 278 A.D. 705, 103 N.Y.S.2d 757 (2d Dep't 1951), judgment aff'd, 302 N.Y. 857, 100 N.E.2d 48 (1951).

6 Mich.—Fisher v. Fisher, 118 Mich. App. 227, 324 N.W.2d 582 (1982).
N.Y.—Matter of Gregory S, 85 Misc. 2d 846, 380 N.Y.S.2d 620 (Fam. Ct. 1976).
Mistreatment of child not privileged
Cal.—In re Edward C., 126 Cal. App. 3d 193, 178 Cal. Rptr. 694 (1st Dist. 1981).

7 U.S.—Prince v. Massachusetts, 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944).
Or.—City of Portland v. Thornton, 174 Or. 508, 149 P.2d 972 (1944).

8 Or.—City of Portland v. Thornton, 174 Or. 508, 149 P.2d 972 (1944).

9 U.S.—Prince v. Massachusetts, 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944).

10 Neb.—Peterson v. Peterson, 239 Neb. 113, 474 N.W.2d 862 (1991).

11 N.Y.—M. I. v. A. I., 107 Misc. 2d 663, 435 N.Y.S.2d 928 (Fam. Ct. 1981).

12 **Compelling state interest**
N.Y.—M. I. v. A. I., 107 Misc. 2d 663, 435 N.Y.S.2d 928 (Fam. Ct. 1981).
Or.—State v. Sprague, 25 Or. App. 621, 550 P.2d 769 (1976).
Vt.—Hunt v. Hunt, 162 Vt. 423, 648 A.2d 843 (1994).

13 U.S.—Barnette v. West Virginia State Board of Education, 47 F. Supp. 251 (S.D. W. Va. 1942), judgment aff'd, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628, 147 A.L.R. 674 (1943).
Utah—State v. Holm, 2006 UT 31, 137 P.3d 726, 22 A.L.R.6th 665 (Utah 2006).
A.L.R. Library
Validity of Bigamy and Polygamy Statutes and Constitutional Provisions, 22 A.L.R.6th 1.

14 Wis.—Peterson v. Widule, 157 Wis. 641, 147 N.W. 966 (1914).

15 N.Y.—Ravenal v. Ravenal, 72 Misc. 2d 100, 338 N.Y.S.2d 324 (Sup 1972).

16 Ill.—Department of Mental Health v. Warmbir, 37 Ill. 2d 267, 226 N.E.2d 4 (1967).

17 Wash.—In re Dependency of J.L.T., 56 Wash. App. 682, 785 P.2d 829 (Div. 1 1990).

18 W. Va.—Matter of Kilpatrick, 180 W. Va. 162, 375 S.E.2d 794 (1988).

19 Mass.—Petitions of Goldman, 331 Mass. 647, 121 N.E.2d 843 (1954).
N.Y.—Dickens v. Ernesto, 30 N.Y.2d 61, 330 N.Y.S.2d 346, 281 N.E.2d 153 (1972).
Limited construction of statute favoring constitutionality
Cal.—Scott v. Family Ministries, 65 Cal. App. 3d 492, 135 Cal. Rptr. 430 (2d Dist. 1976).

20 U.S.—Wilder v. Sugarman, 385 F. Supp. 1013 (S.D. N.Y. 1974).

21 N.J.—In re Adoption of E, 59 N.J. 36, 279 A.2d 785, 48 A.L.R.3d 366 (1971).

22 U.S.—Wilder v. Bernstein, 645 F. Supp. 1292 (S.D. N.Y. 1986), judgment aff'd, 848 F.2d 1338 (2d Cir. 1988).

23 U.S.—Walker v. Johnson, 891 F. Supp. 1040 (M.D. Pa. 1995).

24 Wash.—State v. Meacham, 93 Wash. 2d 735, 612 P.2d 795 (1980).

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16A C.J.S. Constitutional Law § 903

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

5. Other Particular Subjects

§ 903. Domestic relations—Divorce

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1407, 1409

Without violating constitutional dictates, contractual agreements to obtain an ecclesiastical divorce may be enforced. Custody of a child of divorced parents may not be granted or denied solely on the basis of a parent's religious proclivities.

The grant of a divorce which conflicts with the ecclesiastical vows of the parties does not infringe upon the free exercise of religion.[1] Furthermore, where the dissolution of a marriage is contingent, by virtue of a contract, on either party obtaining an ecclesiastical divorce, the enforcement of such a contractual obligation does not violate the Establishment Clause.[2]

The grant of a divorce on the grounds of extreme mental cruelty, based upon a husband's behavior toward his wife and their children following his religious conversion, is constitutional where the husband's actions, rather than his religious beliefs, are the basis for the extreme mental cruelty determination.[3]

The enforcement of a court's order to pay maintenance and attorney's fees to a former spouse was held not to violate the paying spouse's religious liberty.[4]

A court order prohibiting a former wife from attending the church attended by her former husband was held violative of the Free Exercise Clause.[5]

Custody.

Fundamental fairness dictates that in awarding custody of a child, a trial judge take a stance of benign neutrality toward both parents' religious or nonreligious viewpoints.[6] Thus, while the religious beliefs and practices of a parent may be a relevant factor, along with other circumstances, which bears upon the child's best interests and general welfare,[7] the custody of a child of divorced parents may not be awarded[8] or denied[9] solely on the basis of parental religious beliefs or lack thereof without violating religious liberty. Custody may also not be denied on the basis of a parent's religious beliefs concerning medical treatment unless the court finds that it poses an immediate and substantial threat to a child's well-being.[10] Although a court in awarding custody may not determine child custody based on approval or disapproval of the religion of the parents or their interpretation thereof,[11] the adverse effect that a parent's religious convictions may have on a child's development may be considered;[12] a statute providing for consideration of the religious needs of the child does not infringe upon constitutionally protected rights.[13]

A divorced parent granted the custody of a child may not be ordered to rear it in a particular faith without violating religious liberty,[14] and neither may an award of custody be conditioned on a restriction of the parent's right to the free exercise of religion.[15] The constitutionality of financial provisions for the religious education of children of divorced parents has been upheld,[16] particularly where such education accorded with the wishes and religious preferences of both parents;[17] but it has also been considered that the court acts properly in declining to order a custodial parent to continue a particular form of religious training for a child as desired by the other parent.[18]

Visitation rights.

In order to be permissible under the Federal Constitution, an order on child visitation must have a secular purpose, its principal or primary effect must neither advance nor inhibit religion, and it must not foster excessive government entanglement with religion.[19]

In granting visitation privileges to a noncustodial divorced parent, the court may properly consider what effect, if any, conflicting religious values on the part of the divorced parents may have on the development or welfare of the child;[20] however, courts cannot enjoin noncustodial parents from exposing their children to the parents' religious faith during visitation periods absent an affirmative showing of harm to children from such exposure, going beyond a mere showing of confusion or disorientation.[21]

Requiring a divorced parent who is granted visitation rights to take a child to Sunday school or to church is violative of the Establishment Clause.[22] Similarly, an order awarding a grandparent visitation rights every Sunday to take her grandchildren to church has been held repugnant to the Free Exercise Clause.[23]

Footnotes

1 **Incompatibility as ground**
Okla.—Williams v. Williams, 1975 OK 163, 543 P.2d 1401 (Okla. 1975).

2 N.J.—Minkin v. Minkin, 180 N.J. Super. 260, 434 A.2d 665 (Ch. Div. 1981).
Preannulment agreement
N.Y.—Koeppel v. Koeppel, 138 N.Y.S.2d 366 (Sup 1954).

3 S.D.—Hybertson v. Hybertson, 1998 SD 83, 582 N.W.2d 402 (S.D. 1998).

4 Mo.—Walton v. Walton, 789 S.W.2d 64 (Mo. Ct. App. W.D. 1990).

5 Fla.—Allen v. Allen, 622 So. 2d 1369 (Fla. 1st DCA 1993).

6 R.I.—Burrows v. Brady, 605 A.2d 1312 (R.I. 1992).

7 Colo.—In re Marriage of Short, 698 P.2d 1310 (Colo. 1985).
Neb.—Palmer v. Palmer, 249 Neb. 814, 545 N.W.2d 751 (1996).

8 Alaska—Bonjour v. Bonjour, 592 P.2d 1233 (Alaska 1979).

9 Alaska—Johnson v. Johnson, 564 P.2d 71 (Alaska 1977).
Idaho—Osteraas v. Osteraas, 124 Idaho 350, 859 P.2d 948 (1993).

10 Me.—Osier v. Osier, 410 A.2d 1027 (Me. 1980).

11 Mich.—Fisher v. Fisher, 118 Mich. App. 227, 324 N.W.2d 582 (1982).
Mo.—Waites v. Waites, 567 S.W.2d 326 (Mo. 1978).

12 Mo.—Waites v. Waites, 567 S.W.2d 326 (Mo. 1978).
Pa.—Morris v. Morris, 271 Pa. Super. 19, 412 A.2d 139 (1979).
Corporal punishment as basis for change in custody
Neb.—Peterson v. Peterson, 239 Neb. 113, 474 N.W.2d 862 (1991).

13 Alaska—Bonjour v. Bonjour, 592 P.2d 1233 (Alaska 1979).

14 Mich.—Fisher v. Fisher, 118 Mich. App. 227, 324 N.W.2d 582 (1982).
Va.—Lundeen v. Struminger, 209 Va. 548, 165 S.E.2d 285 (1969).

15 Ala.—Ex parte Hilley, 405 So. 2d 708 (Ala. 1981).

16 Fla.—Schatz v. Schatz, 356 So. 2d 892 (Fla. 3d DCA 1978).

17 N.Y.—K. v. K., 83 Misc. 2d 911, 373 N.Y.S.2d 486 (Fam. Ct. 1975).

18 Mich.—Fisher v. Fisher, 118 Mich. App. 227, 324 N.W.2d 582 (1982).

19 N.H.—Chandler v. Bishop, 142 N.H. 404, 702 A.2d 813 (1997).

20 **Religious activity during visitation restricted**
Ohio—Pater v. Pater, 63 Ohio St. 3d 393, 588 N.E.2d 794 (1992).
Pa.—Morris v. Morris, 271 Pa. Super. 19, 412 A.2d 139 (1979).

21 N.H.—Chandler v. Bishop, 142 N.H. 404, 702 A.2d 813 (1997).

22 Tex.—Watts v. Watts, 563 S.W.2d 314 (Tex. Civ. App. Dallas 1978), writ refused n.r.e., (July 5, 1978) and (disapproved of on other grounds by, Jones v. Cable, 626 S.W.2d 734 (Tex. 1981)).

23 Colo.—In re Marriage of Oswald, 847 P.2d 251 (Colo. App. 1993).

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16A C.J.S. Constitutional Law § 904

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Constitutional Law
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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

5. Other Particular Subjects

§ 904. Health

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1395 to 1399

Although the rule may be different with respect to patients who are competent, courts may authorize emergency medical treatment for incompetent patients irrespective of religious objections to a particular mode of treatment asserted on behalf of the patients.

A competent individual has a right based on First Amendment religious liberty to refuse medical treatment unless the State can demonstrate a compelling interest that would justify overriding the individual's choice.[1] In nonemergency situations involving an incompetent patient who is opposed to medical treatment on religious grounds, the court must determine what choice the patient, if competent, would have made with respect to available medical treatment.[2] The free exercise of religion is not infringed by the refusal of a court to terminate the use of life support systems and to permit a person to die, insofar as an incompetent adult in a vegetative state is concerned, in the absence of dogma of the religion of that person that life be or not be sustained by extraordinary measures.[3]

Among the various enactments which have been upheld against challenges based on asserted violations of the religious freedom guaranteed by the First Amendment are laws regulating,[4] funding,[5] or limiting funding,[6] for abortions; precluding courts from

using the receipt of public funds from compelling the performance of a sterilization procedure which is contrary to the religious beliefs or moral convictions of a hospital;[7] prohibiting the cultivation, possession, or use of narcotic or hallucinatory drugs or controlled substances;[8] and providing for the fluoridation of water, in relation to persons whose religious beliefs forbid them to take medication for the prevention or treatment of diseases.[9] However, a township's practice of providing shelter to the homeless by reimbursing private religious mission shelters is unconstitutional where it requires attendance at a religious service as a condition of being given shelter.[10] Also, a statute that exempts religiously affiliated nursing homes from certificate of need requirements if at least a specified percentage of bed capacity is occupied by patients who are members of that religious body violates the Establishment Clause.[11] State board of pharmacy stocking and delivery rules, which exempt pharmacies and pharmacists from stocking and delivering lawfully prescribed drugs, including Plan B emergency contraceptives, for an almost unlimited variety of secular reasons, but fail to provide exemptions for reasons of conscience, violate the Free Exercise Clause of First Amendment.[12]

Blood transfusions.

Without violating First Amendment rights, blood transfusions may not be judicially ordered for a patient who objects to it on religious grounds and who is fully competent, at least where there is no compelling state interest which justifies overriding an adult patient's decision.[13] On the other hand, in view of the interest of the state in the preservation of life, blood transfusions may be judicially ordered, regardless of religious objections expressed by, or in behalf of, a patient in danger who is either unconscious[14] or incapable of making an intelligent choice.[15]

Denial by a health policy authority of a request by a Medicaid recipient for a bloodless liver transplant that would conform to her religious beliefs against blood transfusions, but was only available out of state at medical facility that was more than 50 miles away from the state border, rather than a liver transplant requiring a blood transfusion that could be performed in the state, has been held to violate the Medicaid recipient's rights under the Free Exercise Clause.[16]

Religious hospitals.

Public aid to church-affiliated public hospitals is not violative of the Establishment Clause of the First Amendment or of state constitutions,[17] so long as the institution is not pervasively or distinctly religious to an excessive degree,[18] or generally violative of state constitutional provisions proscribing preference by law to any religious sect[19] or aid for religious purposes,[20] but on this latter point there is authority to the contrary effect.[21]

Use of animals in worship.

Snake handling as a religious practice may be prohibited in the exercise of the police power without infringing upon religious liberty.[22] However, ordinances prohibiting the ritual slaughter of animals have been struck down by the U.S. Supreme Court as pursuing a city's governmental interest only against conduct motivated by religious belief in violation of the requirement that laws burdening religious practice must be of general applicability.[23]

Footnotes

1 U.S.—Holmes v. Silver Cross Hospital of Joliet, Ill., 340 F. Supp. 125 (N.D. Ill. 1972).
D.C.—In re Boyd, 403 A.2d 744 (D.C. 1979).

2 D.C.—In re Boyd, 403 A.2d 744 (D.C. 1979).

3 N.J.—Matter of Quinlan, 137 N.J. Super. 227, 348 A.2d 801 (Ch. Div. 1975), decision modified and remanded on other grounds, 70 N.J. 10, 355 A.2d 647, 79 A.L.R.3d 205 (1976).

4 U.S.—Margaret S. v. Edwards, 488 F. Supp. 181 (E.D. La. 1980).

Mo.—Rodgers v. Danforth, 486 S.W.2d 258 (Mo. 1972).

5 Minn.—McKee v. Ramsey County, 316 N.W.2d 555 (Minn. 1982).

6 U.S.—Harris v. McRae, 448 U.S. 297, 100 S. Ct. 2671, 65 L. Ed. 2d 784 (1980).

N.J.—Right to Choose v. Byrne, 91 N.J. 287, 450 A.2d 925 (1982).

7 U.S.—Chrisman v. Sisters of St. Joseph of Peace, 506 F.2d 308 (9th Cir. 1974).

8 N.C.—State v. Bullard, 267 N.C. 599, 148 S.E.2d 565 (1966).

Drug paraphernalia

Me.—Rupert v. City of Portland, 605 A.2d 63 (Me. 1992).

Marijuana

U.S.—U.S. v. Spears, 443 F.2d 895 (5th Cir. 1971).

D.C.—Nesbeth v. U.S., 870 A.2d 1193 (D.C. 2005).

Tenn.—Gaskin v. State, 490 S.W.2d 521 (Tenn. 1973).

Peyote

U.S.—Employment Div., Dept. of Human Resources of Oregon v. Smith, 494 U.S. 872, 110 S. Ct. 1595, 108 L. Ed. 2d 876 (1990).

Psilocybin

Wyo.—Trujillo v. State, 2 P.3d 567 (Wyo. 2000).

LSD

U.S.—Randall v. Wyrick, 441 F. Supp. 312 (W.D. Mo. 1977).

A.L.R. Library

Free exercise of religion as defense to prosecution for narcotic or psychedelic drug offense, 35 A.L.R.3d 939.

9 Ohio—Kraus v. City of Cleveland, 55 Ohio Op. 6, 66 Ohio L. Abs. 417, 116 N.E.2d 779 (C.P. 1953), judgment aff'd, 55 Ohio Op. 36, 76 Ohio L. Abs. 214, 121 N.E.2d 311 (Ct. App. 8th Dist. Cuyahoga County 1954), judgment aff'd, 163 Ohio St. 559, 57 Ohio Op. 1, 127 N.E.2d 609 (1955).

Okla.—Dowell v. City of Tulsa, 1954 OK 194, 273 P.2d 859, 43 A.L.R.2d 445 (Okla. 1954).

10 Ind.—Center Tp. of Marion County v. Coe, 572 N.E.2d 1350 (Ind. Ct. App. 1991).

11 N.J.—New Jersey Ass'n of Health Care Facilities v. State, 284 N.J. Super. 347, 665 A.2d 399 (Law Div. 1995).

12 U.S.—Stormans Inc. v. Selecky, 844 F. Supp. 2d 1172 (W.D. Wash. 2012).

13 N.Y.—Matter of Melideo, 88 Misc. 2d 974, 390 N.Y.S.2d 523 (Sup 1976).

Protection of patient's children insufficient interest

Fla.—Public Health Trust of Dade County v. Wons, 541 So. 2d 96 (Fla. 1989).

Securing testimony at trial insufficient interest

Miss.—In re Brown, 478 So. 2d 1033 (Miss. 1985).

14 N.J.—John F. Kennedy Memorial Hospital v. Heston, 58 N.J. 576, 279 A.2d 670 (1971) (overruled on other grounds by, Matter of Conroy, 98 N.J. 321, 486 A.2d 1209, 48 A.L.R.4th 1 (1985)).

15 D.C.—In re Osborne, 294 A.2d 372 (D.C. 1972).

N.J.—John F. Kennedy Memorial Hospital v. Heston, 58 N.J. 576, 279 A.2d 670 (1971) (overruled on other grounds by, Matter of Conroy, 98 N.J. 321, 486 A.2d 1209, 48 A.L.R.4th 1 (1985)).

As to minors, see § 905.

16 Kan.—Stinemetz v. Kansas Health Policy Authority, 45 Kan. App. 2d 818, 252 P.3d 141 (2011).

17 Idaho—Board of County Com'rs of Twin Falls County v. Idaho Health Facilities Authority, 96 Idaho 498, 531 P.2d 588 (1974).

Miss.—In re Validation of $15,000,000 Hospital Revenue Bonds (Methodist Hospital Project) Series 1978, City of Hattiesburg, Forrest and Lamar Counties, Dated April 1, 1978, 361 So. 2d 44 (Miss. 1978).

Okla.—Tulsa Area Hospital Council, Inc. v. Oral Roberts University, 1981 OK 29, 626 P.2d 316 (Okla. 1981).

18 Wis.—State ex rel. Wisconsin Health Facilities Authority v. Lindner, 91 Wis. 2d 145, 280 N.W.2d 773 (1979).

19 Ky.—Kentucky Bldg. Com'n v. Effron, 310 Ky. 355, 220 S.W.2d 836 (1949).

20 Miss.—In re Validation of $15,000,000 Hospital Revenue Bonds (Methodist Hospital Project) Series 1978, City of Hattiesburg, Forrest and Lamar Counties, Dated April 1, 1978, 361 So. 2d 44 (Miss. 1978).
Utah—Manning v. Sevier County, 30 Utah 2d 305, 517 P.2d 549 (1973).
Wis.—State ex rel. Wisconsin Health Facilities Authority v. Lindner, 91 Wis. 2d 145, 280 N.W.2d 773 (1979).

21 Idaho—Board of County Com'rs of Twin Falls County v. Idaho Health Facilities Authority, 96 Idaho 498, 531 P.2d 588 (1974).

22 Ky.—Lawson v. Commonwealth, 291 Ky. 437, 164 S.W.2d 972 (1942).
N.C.—State v. Massey, 229 N.C. 734, 51 S.E.2d 179 (1949).
Tenn.—Harden v. State, 188 Tenn. 17, 216 S.W.2d 708 (1948).
Public nuisance
Tenn.—State ex rel. Swann v. Pack, 527 S.W.2d 99 (Tenn. 1975).

23 U.S.—Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993).
Provision allowing ritual slaughter applied
Miss.—Spell v. Muhammad, 756 So. 2d 748 (Miss. 2000).

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16A C.J.S. Constitutional Law § 905

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Constitutional Law
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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

5. Other Particular Subjects

§ 905. Health—Minors

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1356, 1395 to 1399, 1408

In order to avert serious consequences, without violating religious freedom, courts may authorize medical treatment of minors irrespective of religious objections asserted on their behalf.

Inasmuch as the right to practice religion freely does not include the liberty to expose a child to communicable disease or to ill health or death,[1] courts may, as by the appointment of a guardian, authorize medical treatment for minors,[2] such as blood transfusions,[3] irrespective of religious objections made on their behalf. This is particularly so where a minor's health is in serious jeopardy,[4] or in order to alleviate a physical condition which might affect a minor's psychological well-being and future development.[5] Furthermore, parents may be required, irrespective of their religious beliefs, to supply children with medical, dental, optometrical, or surgical care.[6]

Among the enactments which have been upheld against claims that they violated religious liberty are laws requiring the operators of child residential homes to maintain minimum standards of health, nutrition, cleanliness, and sanitation;[7] requiring all babies born in the state to undergo testing for metabolic diseases;[8] requiring vaccination as a condition for admission to public school;[9]

prohibiting state-licensed counselors from engaging in sexual orientation change efforts therapy with clients under age 18;[10] and offering grants to religious and other institutions providing counseling on teenage sexuality.[11]

Wrongful death.

A church's espousal of spiritual treatment has been held entitled to substantial free exercise protection, precluding the imposition of punitive damages in a wrongful death action arising from the death of a child who was treated only through spiritual means.[12]

Footnotes

1 U.S.—Prince v. Massachusetts, 321 U.S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944).
Colo.—People in Interest of D. L. E., 645 P.2d 271 (Colo. 1982).
Me.—Osier v. Osier, 410 A.2d 1027 (Me. 1980).
Or.—Matter of Jensen, 54 Or. App. 1, 633 P.2d 1302 (1981).

2 Ill.—People ex rel. Wallace v. Labrenz, 411 Ill. 618, 104 N.E.2d 769, 30 A.L.R.2d 1132 (1952).
Mo.—Morrison v. State, 252 S.W.2d 97 (Mo. Ct. App. 1952).
Epileptic
Colo.—People in Interest of D. L. E., 645 P.2d 271 (Colo. 1982).
A.L.R. Library
Power of Court or Other Public Agency to Order Vaccination over Parental Religious Objection, 94 A.L.R.5th 613.
Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered, 21 A.L.R.5th 248.

3 U.S.—Jehovah's Witnesses in State of Wash. v. King County Hospital Unit No. 1 (Harborview), 278 F. Supp. 488 (W.D. Wash. 1967), judgment aff'd, 390 U.S. 598, 88 S. Ct. 1260, 20 L. Ed. 2d 158 (1968).
N.J.—Muhlenberg Hospital v. Patterson, 128 N.J. Super. 498, 320 A.2d 518 (Law Div. 1974).
N.Y.—In re Sampson, 65 Misc. 2d 658, 317 N.Y.S.2d 641 (Fam. Ct. 1970), order aff'd, 37 A.D.2d 668, 323 N.Y.S.2d 253 (3d Dep't 1971), order aff'd, 29 N.Y.2d 900, 328 N.Y.S.2d 686, 278 N.E.2d 918 (1972).
Eight-year old girl
Mass.—Matter of McCauley, 409 Mass. 134, 565 N.E.2d 411 (1991).

4 **Enlarged head**
Or.—Matter of Jensen, 54 Or. App. 1, 633 P.2d 1302 (1981).

5 **Deformed face**
N.Y.—In re Sampson, 65 Misc. 2d 658, 317 N.Y.S.2d 641 (Fam. Ct. 1970), order aff'd, 37 A.D.2d 668, 323 N.Y.S.2d 253 (3d Dep't 1971), order aff'd, 29 N.Y.2d 900, 328 N.Y.S.2d 686, 278 N.E.2d 918 (1972).

6 N.Y.—Matter of Gregory S, 85 Misc. 2d 846, 380 N.Y.S.2d 620 (Fam. Ct. 1976).

7 Miss.—Fountain v. State ex rel. Mississippi State Dept. of Health, 608 So. 2d 705 (Miss. 1992).

8 Neb.—In re Interest of Anaya, 276 Neb. 825, 758 N.W.2d 10 (2008).

9 § 878.

10 U.S.—King v. Governor of the State of New Jersey, 767 F.3d 216, 89 Fed. R. Serv. 3d 1260 (3d Cir. 2014).

11 U.S.—Bowen v. Kendrick, 487 U.S. 589, 108 S. Ct. 2562, 101 L. Ed. 2d 520 (1988).

12 Minn.—Lundman v. McKown, 530 N.W.2d 807 (Minn. Ct. App. 1995).

16A C.J.S. Constitutional Law § 906

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Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

5. Other Particular Subjects

§ 906. Judicial proceedings

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1317, 1322

Requiring conformity to secular law in a secular court, with respect to judicial proceedings and demeanor, does not necessarily violate the guaranty of religious freedom; however, the freedom to hold religious beliefs and opinions may not be restricted by judicial mandates.

The compelled compliance with secular law in a secular court does not violate the Free Exercise Clause of the First Amendment with respect to an individual who objects to court procedures on religious grounds.[1] This rule has been followed with respect to various particular persons and matters, as where a party objects to a trial by jury,[2] refuses to testify before a grand jury,[3] or in a criminal trial,[4] or where there is a challenge to the manner of service of legal process.[5] There is no violation of religious liberty in preventing a criminal defendant from being represented by an unlicensed lay counsel[6] or from self representation.[7]

An exemption from compulsory jury duty may be granted, on the basis of the Free Exercise Clause, where a prospective juror is prohibited by his or her religion from serving on a jury.[8] A ministerial exception in a selection plan for grand and petit jurors does not violate the First Amendment.[9] Litigants may also use peremptory challenges to exclude persons from service on juries

in individual cases on the basis of their religious affiliation.[10] Furthermore, where the standard for excusing a prospective juror based upon his or her views on death penalty draws no religious or secular distinction, excusing a juror based on his or her opposition to the death penalty does not violate the constitutional right of religious freedom.[11]

The constitutional guaranty of religious liberty and freedom of conscience abrogates the common-law rule that a person must believe in the deity in order to be a competent witness.[12] A belief in God may not be required as a qualification for service as a juror either in criminal[13] or in civil[14] proceedings. The administration of a religiously oriented oath to veniremen, jurors, and witnesses is not in violation of the Establishment Clause or a prohibition of religious qualifications for public office where a solemn affirmation or declaration may be made in lieu of an oath having religious connotations.[15]

The freedom to hold religious beliefs and opinions may not be restricted by judicial mandates,[16] and any order specifically requiring religious observance or religious instruction is contrary to constitutional principles of religious freedom.[17]

A defendant's waiver of the right to be present at voir dire has been held to have been exacted in violation of the right to free exercise of religion, where the defendant unjustifiably was required to choose between being present at voir dire and celebrating the Sabbath.[18]

Admission in a murder prosecution of evidence of defendant's religious affiliation and practices do not implicate a defendant's right to free exercise of religion where defendant's religious practices tend to establish a motive for the murder.[19]

Attire and demeanor.

An attorney, who is a member of the clergy, has been prohibited from wearing a clerical collar while trying a criminal case before a jury[20] although the propriety of such a prohibition under the Free Exercise Clause has been subsequently questioned in view of the circumstances of the case and the current state of the law.[21] The wearing of headgear in the presence of the court has been accorded protection under the Free Exercise Clause.[22]

The Free Exercise Clause entitles a criminal defendant to wear clothing with ostensible religious pictures and names during a trial.[23]

The refusal of defendant, on religious grounds, to rise in court upon the entry of judge or jury is not necessarily protected by the First Amendment.[24]

Prayer.

There is authority that a judge's practice of opening court by reciting a prayer aloud violates the Establishment Clause.[25] However, it has also been held that a trial judge's recitation of a prayer in open court is not plain error requiring a new trial[26] although such practice has been discouraged.[27]

Footnotes

1 U.S.—U.S. v. Braunstein, 474 F. Supp. 1 (D.N.J. 1978).

2 U.S.—Africa v. Anderson, 510 F. Supp. 28 (E.D. Pa. 1980), aff'd, 707 F.2d 1399 (3d Cir. 1983) and aff'd, 707 F.2d 1399 (3d Cir. 1983).

3 N.Y.—People v. Woodruff, 26 A.D.2d 236, 272 N.Y.S.2d 786 (2d Dep't 1966), order aff'd, 21 N.Y.2d 848, 288 N.Y.S.2d 1004, 236 N.E.2d 159 (1968).

Fraud investigation

N.Y.—Matter of Fuhrer, 100 Misc. 2d 315, 419 N.Y.S.2d 426 (Sup 1979).

4 U.S.—U.S. v. Huss, 482 F.2d 38 (2d Cir. 1973).

S.C.—State v. Bing, 272 S.C. 544, 253 S.E.2d 101 (1979).

Clergyman

N.C.—In re Williams, 269 N.C. 68, 152 S.E.2d 317 (1967).

Nun

N.J.—In re Murtha, 115 N.J. Super. 380, 279 A.2d 889, 49 A.L.R.3d 1196 (App. Div. 1971).

5 **Service by telex**

U.S.—Cooper v. Church of Scientology of Boston, Inc., 92 F.R.D. 783 (D. Mass. 1982).

6 U.S.—Turner v. American Bar Ass'n, 407 F. Supp. 451 (N.D. Tex. 1975), aff'd, 539 F.2d 715 (7th Cir. 1976) and judgment aff'd, 542 F.2d 56 (8th Cir. 1976).

7 U.S.—Africa v. Anderson, 542 F. Supp. 224 (E.D. Pa. 1982).

8 U.S.—U.S. v. Hillyard, 52 F. Supp. 612 (E.D. Wash. 1943).

A.L.R. Library

Religious belief as ground for exemption or excuse from jury service, 2 A.L.R.3d 1392.

9 U.S.—U.S. v. Butler, 611 F.2d 1066 (5th Cir. 1980).

10 Tex.—Casarez v. State, 913 S.W.2d 468 (Tex. Crim. App. 1994), on reh'g, (Dec. 13, 1995).

11 Ga.—Cromartie v. State, 270 Ga. 780, 514 S.E.2d 205 (1999).

Kan.—State v. Kleypas, 272 Kan. 894, 40 P.3d 139 (2001).

12 Ala.—Roberson v. State, 384 So. 2d 864 (Ala. Crim. App. 1980).

Admissibility of dying declarations

Nev.—Wilson v. State, 86 Nev. 320, 468 P.2d 346 (1970).

13 Md.—Schowgurow v. State, 240 Md. 121, 213 A.2d 475 (1965).

14 Md.—Schiller v. Lefkowitz, 242 Md. 461, 219 A.2d 378 (1966).

15 Ariz.—State v. Albe, 10 Ariz. App. 545, 460 P.2d 651 (Div. 1 1969).

Cal.—People v. Cohen, 12 Cal. App. 3d 298, 90 Cal. Rptr. 612 (2d Dist. 1970).

Colo.—People v. Velarde, 200 Colo. 374, 616 P.2d 104 (1980).

Giving to jury an oath concluding with words "So help me God"

Ky.—Pierce v. Com., 408 S.W.2d 187 (Ky. 1966).

Atheist defendant sworn

Del.—Rocker v. State, 240 A.2d 141 (Del. 1968).

16 U.S.—Jaffree By and Through Jaffree v. James, 544 F. Supp. 727, 5 Ed. Law Rep. 1153 (S.D. Ala. 1982).

17 Tex.—Watts v. Watts, 563 S.W.2d 314 (Tex. Civ. App. Dallas 1978), writ refused n.r.e., (July 5, 1978) and (disapproved of on other grounds by, Jones v. Cable, 626 S.W.2d 734 (Tex. 1981)).

18 **Lack of compelling state interest**

N.Y.—People v. Gilliam, 215 A.D.2d 401, 626 N.Y.S.2d 245 (2d Dep't 1995).

19 Kan.—State v. Dreiling, 274 Kan. 518, 54 P.3d 475 (2002).

20 N.Y.—La Rocca v. Lane, 47 A.D.2d 243, 366 N.Y.S.2d 456 (2d Dep't 1975), order aff'd, 37 N.Y.2d 575, 376 N.Y.S.2d 93, 338 N.E.2d 606, 84 A.L.R.3d 1131 (1975).

21 N.Y.—People v. Rodriguez, 101 Misc. 2d 536, 424 N.Y.S.2d 600 (Sup 1979).

22 **Skullcap worn by a Jew**

N.Y.—Close-It Enterprises, Inc. v. Weinberger, 64 A.D.2d 686, 407 N.Y.S.2d 587 (2d Dep't 1978).

Takia worn by Sunni Muslim

R.I.—In re Palmer, 120 R.I. 250, 386 A.2d 1112 (1978).

Wearing of filaas by member of Ujamma sect

Md.—McMillan v. State, 258 Md. 147, 265 A.2d 453 (1970).

23 Fla.—Joseph v. State, 642 So. 2d 613 (Fla. 4th DCA 1994), cause dismissed, 5 So. 3d 669 (Fla. 2009).

A.L.R. Library

Wearing of Religious Symbols in Courtroom as Protected by First Amendment, 18 A.L.R.6th 775.

24 U.S.—In re Chase, 468 F.2d 128 (7th Cir. 1972).

25 U.S.—North Carolina Civil Liberties Union Legal Foundation v. Constangy, 947 F.2d 1145 (4th Cir. 1991).

26 Okla.—Martinez v. State, 1999 OK CR 33, 984 P.2d 813 (Okla. Crim. App. 1999).

27 Okla.—Martinez v. State, 1999 OK CR 33, 984 P.2d 813 (Okla. Crim. App. 1999).

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16A C.J.S. Constitutional Law § 907

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Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

5. Other Particular Subjects

§ 907. Proselytizing and solicitation of funds

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1389 to 1393

Religious proselytizing and solicitation of funds, which are protected by the Free Exercise Clause of the First Amendment, may not be prohibited but may be regulated by public authorities.

Acts of proselytizing,[1] soliciting donations for religious purposes,[2] and distributing religious literature[3] in public places are within the scope of the free exercise of religion clause of the First Amendment. A state or subdivision thereof may not wholly deny the right to preach, to practice religious activities, or to disseminate religious views,[4] and statutes or ordinances absolutely prohibiting the right to sell or disseminate information, or solicit funds,[5] are invalid.

On the other hand, a state may regulate the times, places, and manner of street solicitations which are dictated by a compelling state interest to safeguard the peace, good order, and comfort of the community[6] provided that such regulation does not involve any religious test and does not unreasonably obstruct or delay the collection of funds.[7] Similarly, a state may regulate the times, places, and manner of religious proselytization and solicitation in public forums other than streets[8] due to the significant state interest in the orderly flow of large crowds[9] provided that such restrictions are administered in a nondiscriminatory fashion and

not premised on censorship of the protected message.[10] Furthermore, public authorities may restrict the sale or distribution of religious literature and the solicitation of donations to specific locations, such as booths, in such places as state fairs,[11] national parks,[12] or airports.[13]

Proselytization and solicitation on public property which is not a "public forum" may be restricted if there is a rational basis for the restraints imposed,[14] but it may not be prohibited if other speech activities on the same premises are permitted.[15]

Door-to-door distributions.

Distributions of religious materials door-to-door may not be absolutely prohibited,[16] and neither may religious solicitation be prohibited by an ordinance applicable generally to peddlers[17] which does not distinguish between commercial and noncommercial solicitations.[18] However, members of a religious organization engaged in a door-to-door ministry may not enter property with "No Solicitation" and "No Trespassing" signs since whether visits for the purposes of ministry are permitted is up to the individual household.[19]

Trespass.

Entering private property in violation of a criminal trespass statute is not protected under the Free Exercise Clause.[20]

Religious brainwashing.

Neither a state constitutional provision nor the First Amendment prevented former members of a church from asserting traditional fraud claims against the church for employing deceptive recruitment practices resulting in an unknowing entry into an atmosphere in which they were subjected to brainwashing.[21]

Footnotes

1 U.S.—McDaniel v. Paty, 435 U.S. 618, 98 S. Ct. 1322, 55 L. Ed. 2d 593 (1978); International Soc. For Krishna Consciousness, Inc. v. Barber, 650 F.2d 430 (2d Cir. 1981); Levers v. City of Tullahoma, Tenn., 446 F. Supp. 884 (E.D. Tenn. 1978).
Religious character despite commercial aspect
U.S.—International Soc. for Krishna Consciousness v. State Fair of Texas, 461 F. Supp. 719 (N.D. Tex. 1978).

2 U.S.—International Soc. For Krishna Consciousness, Inc. v. Barber, 650 F.2d 430 (2d Cir. 1981); Conlon v. City of North Kansas City, Mo., 530 F. Supp. 985 (W.D. Mo. 1981).
N.C.—Heritage Village Church and Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979), judgment aff'd, 299 N.C. 399, 263 S.E.2d 726 (1980).

3 U.S.—Murdock v. Com. of Pennsylvania, 319 U.S. 105, 63 S. Ct. 870, 87 L. Ed. 1292, 146 A.L.R. 81 (1943); U.S. v. Boesewetter, 463 F. Supp. 370 (D.D.C. 1978); Conlon v. City of North Kansas City, Mo., 530 F. Supp. 985 (W.D. Mo. 1981).

4 U.S.—Cantwell v. State of Connecticut, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213, 128 A.L.R. 1352 (1940).
Sale of message-bearing T-shirts outside city zoo
Wash.—Higher Taste v. City of Tacoma, 755 F. Supp. 2d 1130 (W.D. Wash. 2010).
Application of general rules
A municipal ordinance simply prohibiting engagement in any game, sport, amusement, performance, or exhibition, on any public way, could not constitutionally be applied to private members of religious

organizations performing, as matter of duty to their organization, a religious ritual consisting of religious chants, dancing, playing of sacred instruments, and shuffling to the beat of the chanting.

U.S.—International Society for Krishna Consciousness, Inc. v. Conlisk, 374 F. Supp. 1010 (N.D. Ill. 1973).

5 U.S.—Jamison v. State of Tex., 318 U.S. 413, 63 S. Ct. 669, 87 L. Ed. 869 (1943); Smith v. City of Manchester, 460 F. Supp. 30 (E.D. Tenn. 1978).

Prohibition as to particular neighborhood

U.S.—International Soc. for Krishna Consciousness, Inc. v. City of New Orleans, 347 F. Supp. 945 (E.D. La. 1972).

6 U.S.—Cantwell v. State of Connecticut, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213, 128 A.L.R. 1352 (1940); International Soc. For Krishna Consciousness, Inc. v. Barber, 650 F.2d 430 (2d Cir. 1981); Smith v. City of Manchester, 460 F. Supp. 30 (E.D. Tenn. 1978).

Prohibition of initiatory physical contact

U.S.—International Soc. for Krishna Consciousness of Western Pa., Inc. v. Griffin, 437 F. Supp. 666 (W.D. Pa. 1977).

Proselytizing near United Nations Headquarters

U.S.—International Soc. for Krishna Consciousness, Inc. v. City of New York, 501 F. Supp. 684 (S.D. N.Y. 1980).

7 U.S.—Cantwell v. State of Connecticut, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213, 128 A.L.R. 1352 (1940); International Soc. for Krishna Consciousness, Inc. v. City of New Orleans, 347 F. Supp. 945 (E.D. La. 1972); Smith v. City of Manchester, 460 F. Supp. 30 (E.D. Tenn. 1978).

8 U.S.—Heffron v. International Soc. for Krishna Consciousness, Inc., 452 U.S. 640, 101 S. Ct. 2559, 69 L. Ed. 2d 298 (1981).

Sports complex

U.S.—International Soc. for Krishna Consciousness, Inc. v. New Jersey Sports and Exposition Authority, 532 F. Supp. 1088, 10 Fed. R. Evid. Serv. 472 (D.N.J. 1981), judgment aff'd, 691 F.2d 155 (3d Cir. 1982).

State fair as forum

U.S.—International Soc. for Krishna Consciousness, Inc. v. Bowen, 456 F. Supp. 437 (S.D. Ind. 1978), judgment aff'd, 600 F.2d 667 (7th Cir. 1979) and aff'd, 601 F.2d 597 (7th Cir. 1979); International Soc. for Krishna Consciousness v. State Fair of Texas, 461 F. Supp. 719 (N.D. Tex. 1978).

9 U.S.—Heffron v. International Soc. for Krishna Consciousness, Inc., 452 U.S. 640, 101 S. Ct. 2559, 69 L. Ed. 2d 298 (1981).

10 U.S.—International Soc. for Krishna Consciousness v. State Fair of Texas, 461 F. Supp. 719 (N.D. Tex. 1978).

11 U.S.—Heffron v. International Soc. for Krishna Consciousness, Inc., 452 U.S. 640, 101 S. Ct. 2559, 69 L. Ed. 2d 298 (1981); Hynes v. Metropolitan Government of Nashville and Davidson County, 667 F.2d 549 (6th Cir. 1982).

12 U.S.—Liberman v. Schesventer, 447 F. Supp. 1355 (M.D. Fla. 1978).

13 U.S.—International Soc. for Krishna Consciousness of Atlanta v. Eaves, 601 F.2d 809 (5th Cir. 1979).

14 U.S.—International Soc. for Krishna Consciousness, Inc. v. New Jersey Sports and Exposition Authority, 532 F. Supp. 1088, 10 Fed. R. Evid. Serv. 472 (D.N.J. 1981), judgment aff'd, 691 F.2d 155 (3d Cir. 1982).

15 U.S.—Jaffe v. Alexis, 659 F.2d 1018 (9th Cir. 1981).

16 U.S.—Murdock v. City of Jacksonville, Fla., 361 F. Supp. 1083 (M.D. Fla. 1973).

Legitimate public interests not shown

U.S.—Troyer v. Town of Babylon, 483 F. Supp. 1135 (E.D. N.Y. 1980), aff'd, 628 F.2d 1346 (2d Cir. 1980), judgment aff'd, 449 U.S. 988, 101 S. Ct. 522, 66 L. Ed. 2d 285 (1980).

17 U.S.—International Society for Krishna Consciousness, Inc. v. Conlisk, 374 F. Supp. 1010 (N.D. Ill. 1973).

18 U.S.—Weissman v. City of Alamogordo, N. M., 472 F. Supp. 425 (D.N.M. 1979); Love v. Mayor, City of Cheyenne, Wyo., 448 F. Supp. 128 (D. Wyo. 1978).

19 U.S.—Watchtower Bible Tract Soc. of New York, Inc. v. Rodriguez, 920 F. Supp. 2d 241 (D.P.R. 2013).

20 **Abortion clinic**

Wis.—State v. Horn, 126 Wis. 2d 447, 377 N.W.2d 176 (Ct. App. 1985), decision aff'd, 139 Wis. 2d 473, 407 N.W.2d 854 (1987).

21 Cal.—Molko v. Holy Spirit Assn., 46 Cal. 3d 1092, 252 Cal. Rptr. 122, 762 P.2d 46 (1988), as modified on denial of reh'g, (Dec. 1, 1988).

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16A C.J.S. Constitutional Law § 908

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

5. Other Particular Subjects

§ 908. Proselytizing and solicitation of funds—Licenses and fees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1389, 1391

Generally, the licensing of religious solicitations is limited to the prevention of fraudulent practices, and any exemption from those requirements may not discriminate between religious denominations.

Generally, in view of the guaranty of religious liberty in the First Amendment, a license may not be required in order to engage in proselytizing or in the sale of religious literature.[1] Thus, a village ordinance which requires individuals to obtain a permit prior to engaging in door-to-door advocacy and to display upon demand the permit, containing one's name, violates the First Amendment as it applies to religious proselytizing.[2] However, regulations which are designed to prevent fraudulent practices in solicitations for avowed charitable purposes are applicable to solicitations conducted by religious organizations.[3] Thus, a municipality may require a religious organization to register, identify its solicitors, and make disclosure reports concerning its public solicitation of funds without facially violating the free exercise of religion.[4] However, where a state exempts religious organizations from legislation designed to protect the public from fraudulent practices in the solicitation of contributions for purportedly charitable purposes, it may not practice official denominational preference;[5] accordingly, a state may not exempt

from compliance from licensing, registration, and reporting requirements all religious organizations except those which solicit more than half of their funds from nonmembers[6] or whose financial support is otherwise derived primarily from nonmembers.[7]

A statute or ordinance which vests arbitrary discretion in a public official to grant or refuse a permit is invalid,[8] and discretion or restraining control may not be vested in an administrative official in the absence of appropriate standards to guide his or her action.[9] Furthermore, any licensing pertaining to religious solicitation may not depend on a public official's determination as to what is a religious cause.[10]

While the exercise of religious freedom may not be taxed through licensing,[11] a nominal fee commensurate with the expense involved in the regulation of solicitations or other religious activity may be imposed;[12] on the other hand, a fee which is not nominal is invalid,[13] as where the fee is intended merely to defray the expenses of licensing and regulation but is in fact more than adequate to defray those expenses.[14]

Footnotes

1 U.S.—Murdock v. Com. of Pennsylvania, 319 U.S. 105, 63 S. Ct. 870, 87 L. Ed. 1292, 146 A.L.R. 81 (1943).
Ky.—International Soc. for Krishna Consciousness, Inc. v. Com. ex rel. Carpenter, 610 S.W.2d 910 (Ky. Ct. App. 1980).
N.Y.—People v. Wood, 93 Misc. 2d 25, 402 N.Y.S.2d 726 (J. Ct. 1978).

2 **Surrender of anonymity**
U.S.—Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 536 U.S. 150, 122 S. Ct. 2080, 153 L. Ed. 2d 205 (2002).

3 Cal.—Rescue Army v. Municipal Court of City of Los Angeles, 28 Cal. 2d 460, 171 P.2d 8 (1946).
Bona fide religious organization not shown by record
N.Y.—People v. Wood, 93 Misc. 2d 25, 402 N.Y.S.2d 726 (J. Ct. 1978).

4 U.S.—International Soc. for Krishna Consciousness of Houston, Inc. v. City of Houston, Tex., 689 F.2d 541 (5th Cir. 1982).

5 U.S.—Larson v. Valente, 456 U.S. 228, 102 S. Ct. 1673, 72 L. Ed. 2d 33 (1982).

6 U.S.—Larson v. Valente, 456 U.S. 228, 102 S. Ct. 1673, 72 L. Ed. 2d 33 (1982).

7 N.C.—Heritage Village Church and Missionary Fellowship, Inc. v. State, 299 N.C. 399, 263 S.E.2d 726 (1980).

8 U.S.—Kunz v. People of State of New York, 340 U.S. 290, 71 S. Ct. 312, 95 L. Ed. 280 (1951); International Soc. For Krishna Consciousness v. Hays, 438 F. Supp. 1077 (S.D. Fla. 1977); Cherris v. Amundson, 460 F. Supp. 326 (E.D. La. 1978).
Fixed limitation on expenditures
N.C.—Heritage Village Church and Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979), judgment aff'd, 299 N.C. 399, 263 S.E.2d 726 (1980).

9 U.S.—Kunz v. People of State of New York, 340 U.S. 290, 71 S. Ct. 312, 95 L. Ed. 280 (1951); Conlon v. City of North Kansas City, Mo., 530 F. Supp. 985 (W.D. Mo. 1981).
Overbreadth
Cal.—People v. Fogelson, 21 Cal. 3d 158, 145 Cal. Rptr. 542, 577 P.2d 677 (1978).

10 U.S.—Espinosa v. Rusk, 634 F.2d 477 (10th Cir. 1980), judgment aff'd, 456 U.S. 951, 102 S. Ct. 2025, 72 L. Ed. 2d 477 (1982); Walker v. Wegner, 477 F. Supp. 648 (D.S.D. 1979), order aff'd, 624 F.2d 60 (8th Cir. 1980).
Availability of judicial review
U.S.—Cantwell v. State of Connecticut, 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213, 128 A.L.R. 1352 (1940).
N.C.—Heritage Village Church and Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979), judgment aff'd, 299 N.C. 399, 263 S.E.2d 726 (1980).

11 U.S.—Follett v. Town of McCormick, S.C., 321 U.S. 573, 64 S. Ct. 717, 88 L. Ed. 938, 152 A.L.R. 317 (1944).
Fla.—State ex rel. Singleton v. Woodruff, 153 Fla. 84, 13 So. 2d 704 (1943).
Pa.—Com. City of Nanticoke v. Homer, 153 Pa. Super. 433, 34 A.2d 169 (1943).
Sales tax
Ky.—International Soc. for Krishna Consciousness, Inc. v. Com. ex rel. Carpenter, 610 S.W.2d 910 (Ky. Ct. App. 1980).
S.D.—State v. Van Daalan, 69 S.D. 466, 11 N.W.2d 523 (1943).

12 Ohio—City of Middletown v. Baker, 73 Ohio App. 296, 28 Ohio Op. 453, 39 Ohio L. Abs. 403, 53 N.E.2d 66 (1st Dist. Butler County 1943).

13 U.S.—Murdock v. Com. of Pennsylvania, 319 U.S. 105, 63 S. Ct. 870, 87 L. Ed. 1292, 146 A.L.R. 81 (1943).

14 U.S.—Fernandes v. Limmer, 663 F.2d 619 (5th Cir. 1981).
U.S.—Busey v. District of Columbia, 138 F.2d 592 (App. D.C. 1943).

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16A C.J.S. Constitutional Law § 909

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

5. Other Particular Subjects

§ 909. Public officers and employees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1322, 1323

A religious test may not serve as a qualification for public office or public trust, and a state may not condition the holding of public office on religious beliefs.

A provision of the Federal Constitution provides that no religious test shall ever be required as a qualification to any office or public trust under the United States,[1] and there are similar provisions in state constitutions.[2] The Religious Test Clause of the Federal Constitution is violated by provisions of a state constitution barring persons who deny the existence of a Supreme Being from holding public office.[3] Under this clause, a state law cannot limit public offices to persons who have, or perhaps more properly profess to have, a belief in some particular kind of religious concept.[4]

The First Amendment guaranty of religious freedom prohibits a state from conditioning public office upon an individual's religious beliefs,[5] and the rule has been extended to the retaining of public employment,[6] retirement benefits,[7] or acquiring of a privilege bestowed by the state.[8] A constitutional requirement of a belief in the existence of God as a test for public office

invades the freedom of religion and belief.[9] Furthermore, the holding of a public office or employment may not be denied on the ground of religious objections to the raising or saluting of the flag.[10]

An applicant for a public office may not be probed as to his or her religious beliefs;[11] however, the government may require an endorsement from a religious institution before hiring a person as a chaplain since it would impermissibly entangle itself in religion to determine who is qualified.[12] Furthermore, an aberration of a public employee, affecting his or her reliability regarding public safety, may be taken into consideration even if it is expressed in religious terms.[13] The termination of public employment because of the employee's practice of plural marriage does not violate his or her right to free exercise of his or her religion.[14]

Members of clergy as state legislators.

A state constitutional provision barring members of the clergy from serving as state legislators is a violation of the Free Exercise Clause.[15]

CUMULATIVE SUPPLEMENT

Cases:

Chaplain of the House of Representatives did not violate the Establishment Clause by denying atheist activist's request to serve as guest chaplain and deliver a secular invocation to House in lieu of usual legislative prayer, where Rulemaking Clause clearly reserved to each House of the Congress the authority to make its own rules, House of Representatives permissibly limited opening prayer to religious prayer, and legislative prayer was consistent with the Establishment Clause. U.S. Const. Amend. 1; U.S. Const. art. 1, § 5, cl. 2. Barker v. Conroy, 921 F.3d 1118 (D.C. Cir. 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—U.S. Const. Art. VI, cl. 3.

2 N.J.—State v. Celmer, 80 N.J. 405, 404 A.2d 1 (1979).

3 S.C.—Silverman v. Campbell, 326 S.C. 208, 486 S.E.2d 1 (1997).

4 U.S.—Martinez v. Clark County, Nev., 846 F. Supp. 2d 1131 (D. Nev. 2012).

5 U.S.—Jensen v. Yonamine, 437 F. Supp. 368 (D. Haw. 1977).
N.J.—State v. Celmer, 80 N.J. 405, 404 A.2d 1 (1979).

6 U.S.—Abood v. Detroit Bd. of Ed., 431 U.S. 209, 97 S. Ct. 1782, 52 L. Ed. 2d 261 (1977).

7 Cal.—Montgomery v. Board of Retirement, 33 Cal. App. 3d 447, 109 Cal. Rptr. 181 (5th Dist. 1973).

8 **Applicant for admission to practice law**
U.S.—Nicholson v. Board of Com'rs of Alabama State Bar Ass'n, 338 F. Supp. 48 (M.D. Ala. 1972).

9 U.S.—Torcaso v. Watkins, 367 U.S. 488, 81 S. Ct. 1680, 6 L. Ed. 2d 982 (1961).
S.C.—Silverman v. Campbell, 326 S.C. 208, 486 S.E.2d 1 (1997).

10 N.J.—Morgan v. Civil Service Commission, 131 N.J.L. 410, 36 A.2d 898 (N.J. Sup. Ct. 1944).
Fireman
Ohio—Bacher v. City of North Ridgeville, 47 Ohio App. 2d 164, 1 Ohio Op. 3d 255, 352 N.E.2d 627 (9th Dist. Lorain County 1975).
Rule inapplicable to military personnel

U.S.—McCord v. Page, 124 F.2d 68 (C.C.A. 5th Cir. 1941).

11 **Security clearance**

U.S.—Dick v. U.S., 339 F. Supp. 1231 (D.D.C. 1972).

Permissible questions on psychological tests

U.S.—McKenna v. Fargo, 451 F. Supp. 1355 (D.N.J. 1978), aff'd, 601 F.2d 575 (3d Cir. 1979).

12 U.S.—Turner v. Parsons, 620 F. Supp. 138 (E.D. Pa. 1985), judgment aff'd, 787 F.2d 584 (3d Cir. 1986) and judgment aff'd, 787 F.2d 584 (3d Cir. 1986).

13 **School bus driver**

Cal.—Hollon v. Pierce, 257 Cal. App. 2d 468, 64 Cal. Rptr. 808 (3d Dist. 1967).

14 **Police officer**

U.S.—Potter v. Murray City, 585 F. Supp. 1126 (D. Utah 1984), judgment aff'd as modified on other grounds, 760 F.2d 1065 (10th Cir. 1985).

15 U.S.—Kirkley v. State of Md., by Mandel, 381 F. Supp. 327 (D. Md. 1974).

Candidacy as constitutional convention delegate affected

U.S.—McDaniel v. Paty, 435 U.S. 618, 98 S. Ct. 1322, 55 L. Ed. 2d 593 (1978).

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16A C.J.S. Constitutional Law § 910

Corpus Juris Secundum | June 2021 Update

Constitutional Law
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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

5. Other Particular Subjects

§ 910. Public involvement in religious exercises or displays

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1314 to 1316, 1374 to 1383

The use of public property for religious exercises or displays may violate the Establishment Clause of the First Amendment depending on the purpose thereof.

The use of public property for the erection and maintenance of religious objects or displays, such as monuments, does not violate the Establishment Clause of the First Amendment where they are considered to be of a secular nature, or the environment is secular.[1] However, since the ability of the government to articulate a secular purpose becomes the crucial focus when the government permits a religious symbol on public property,[2] the fact that there is a religious purpose for the use of the property may result in a violation of the Establishment Clause.[3] Furthermore, the Establishment Clause is violated by a city's decision to permit a private corporation to erect a menorah in a public park pursuant to a standardless system for granting special events permits despite a policy against large, unattended displays on public property.[4]

On the other hand, the erection of a religious symbol on public fair grounds in a secular environment has been upheld as against a contention that it violates a state constitutional provision prohibiting the use of public money or property for the use,

benefit, or support of any church or religion.[5] Furthermore, the lease of state property for religious purposes does not violate the Establishment Clause[6] or a state constitutional provision barring the use of public money or property for religious worship.[7]

Other actions which have been held not violative of the Establishment Clause include the establishment of a "prayer room" in a state capitol building,[8] the flying of the Confederate flag above a state's capitol dome,[9] and the enactment of statutes establishing "In God we trust" as the national motto and providing for its reproduction on United States currency.[10] Also, a state does not violate the Establishment Clause by permitting a private party to display an unattended cross on the grounds of the state capitol where the State does not sponsor the organization's expression, the expression is made on government property which has been opened to the public for speech, and permission is requested through the same application process and on the same terms required of other private groups.[11]

Objective observer.

When determining whether a display has the impermissible effect of communicating a message of governmental endorsement or disapproval of religion in violation of Establishment Clause, a court looks through the eyes of an objective observer who is aware of the purpose, context, and history of the symbol.[12] The objective or reasonable observer is kin to the fictitious reasonably prudent person of tort law, and so the court presumes that the court-created objective observer is aware of information not limited to the information gleaned simply from viewing the challenged display.[13]

Nativity scenes.

When a creche display is challenged as a violation of the Establishment Clause, the critical inquiry is whether the nativity scene at issue communicates a message of government endorsement.[14] Where a city includes a nativity scene in its annual Christmas display for purposes of celebrating the Christmas holiday and depicting the origins of that holiday, these are legitimate secular purposes; thus, in light of the fact that the benefit to Christianity is indirect, remote and incidental, and given a lack of resulting entanglement between government and religious institutions, the inclusion of the nativity scene does not violate the Establishment Clause.[15] Similarly, the display of a privately owned nativity scene on the front lawn of a government office building has been held to violate the Establishment Clause.[16] However, a municipality's neutral accommodation to permit the display of a creche in a traditional public forum at virtually no expense to it cannot be viewed as a violation of the Establishment Clause.[17]

Prayer at public meetings; chaplains.

The practice of having prayers at sessions of public bodies, such as a state legislature,[18] a county board,[19] town meeting,[20] or a local governing body,[21] does not violate the Establishment Clause of the First Amendment, even if the prayer is sectarian,[22] at least where board members refrain from directing the public to participate in the prayers, singling out dissidents for opprobrium, or indicating that their decisions might be influenced by a person's acquiescence in the prayer opportunity.[23] The relevant constraint on legislative prayer under the Establishment Clause derives from its place at the opening of legislative sessions where it is meant to lend gravity to the occasion and reflect values long part of the Nation's heritage; prayer that is solemn and respectful in tone, and that invites lawmakers to reflect upon shared ideals and common ends before they embark on the fractious business of governing, serves that legitimate function.[24] However, a judge's practice of opening court by reciting a prayer has been held to violate the Establishment Clause.[25]

The appointment of a chaplain, paid out of public funds, to offer prayers at a session of a state legislature does not violate the Establishment Clause.[26]

The furnishing of chaplains as part of the armed services to enable soldiers to practice the religion of their choice does not violate the Establishment Clause.[27]

CUMULATIVE SUPPLEMENT

Cases:

Retaining established, religiously expressive monuments, symbols, and practices is quite different from erecting or adopting new ones, and so the passage of time gives rise to a strong presumption of constitutionality under the Establishment Clause. U.S. Const. Amend. 1. American Legion v. American Humanist Association, 139 S. Ct. 2067 (2019).

Where categories of monuments, symbols, and practices with a longstanding history follow in the tradition of the First Congress, in demonstrating respect and tolerance for differing views, engaging in an honest endeavor to achieve inclusivity and nondiscrimination, and recognizing the important role that religion plays in the lives of many Americans, they are likewise constitutional under the Establishment Clause. (Per Justice Alito, joined by three Justices, with two Justices concurring in the judgment.) U.S. Const. Amend. 1. American Legion v. American Humanist Association, 139 S. Ct. 2067 (2019).

State house of representatives policy preferring theistic over non-theistic prayers fit squarely within historical tradition of legislative prayer, and thus did not violate Establishment Clause; as matter of traditional practice, petition to human wisdom and power of science did not capture full sense of prayer, historically understood, and tradition dating to time of Framers always included higher power. U.S. Const. Amend. 1. Fields v. Speaker of Pennsylvania House of Representatives, 936 F.3d 142 (3d Cir. 2019).

To comply with First Amendment's Establishment Clause, a challenged government display must (1) have a secular purpose, (2) not have a principal or primary effect that advances, inhibits, or endorses religion, and (3) not foster an excessive entanglement between government and religion. U.S. Const. Amend. 1. American Humanist Association v. Maryland-National Capital Park and Planning Commission, 874 F.3d 195 (4th Cir. 2017).

County board of commissioners' practice of having one of its members open its public meetings with prayer did not violate Establishment Clause, even though commissioners were all Christian, prayers they offered were generally Christian in tone, and board did not provide opportunities for persons of other faiths to offer invocations, where practice was facially neutral regarding religion, neither other commissioners, nor board as a whole, reviewed or approved invocations' content, there was no evidence of discriminatory intent, and there was no evidence that invocations denigrated nonbelievers or religious minorities, threatened damnation, or preached conversion, that there was pattern of prayers that over time denigrated, proselytized, or betrayed impermissible government purpose, or that members of public were dissuaded from leaving meeting room during prayer, arriving late, or making later protest. U.S. Const. Amend. 1. Bormuth v. County of Jackson, 870 F.3d 494 (6th Cir. 2017).

Nativity scene on county property comported with broader pattern of government recognition of public holidays, and thus did not violate Establishment Clause; nativity scene was part of larger Christmas display that contained various other symbols of Christmas, including Santa Claus in his sleigh, reindeer, four carolers standing in front of lamp post, and seven prominent candy-striped poles. U.S. Const. Amend. 1. Woodring v. Jackson County, Indiana, 986 F.3d 979 (7th Cir. 2021).

The printing of the national motto, "In God We Trust," on United States currency was not impermissible endorsement of a religious view in violation of the Establishment Clause; the motto did not send a message to nonadherents to Christian or monotheistic religions that they were outsiders, instead it merely acknowledged a part of the nation's religious heritage, and

it was one of many historical reminders on currency, with others including portraits of presidents, state symbols, monuments, notable events such as the Louisiana Purchase, and the national bird. U.S. Const. Amend. 1. Mayle v. United States, 891 F.3d 680 (7th Cir. 2018).

Withdrawal of more than one million acres of National Forest System lands by Department of Interior under FLPMA from mining location and entry had secular purpose and did not have as primary effect advancing religion, and therefore withdrawal did not violate Establishment Clause of the First Amendment; preservation of cultural and tribal resources was one of four rationales for withdrawal identified in record of decision (ROD), some of tribal resources did not have sacred meaning and uses for tribe members, and preservation of areas of cultural or historic value area could constitute "secular purpose" justifying state action even if area's significance had religious connection, in part. U.S. Const. Amend. 1; Federal Land Policy and Management Act of 1976 § 102 et seq., 43 U.S.C.A. § 1701 et seq. National Mining Association v. Zinke, 877 F.3d 845 (9th Cir. 2017).

In determining whether religious prayer opportunity at start of meeting of legislative or other public body violates Establishment Clause, courts ought to avoid becoming involved in reviewing or approving specific prayers. U.S. Const. Amend. 1. Williamson v. Brevard County, 928 F.3d 1296 (11th Cir. 2019).

Plaintiff's alleged injury was sufficient to support Article III standing for Establishment Clause challenge to city's maintenance of 34-foot Latin cross in public park; plaintiff alleged that he used the park many times throughout the year and was offended and felt excluded by the religious symbol. (Per curiam, with two judges concurring in the judgment.) U.S. Const. art. 3, § 2, cl. 1; U.S. Const. Amend. 1. Kondrat'yev v. City of Pensacola, Florida, 903 F.3d 1169 (11th Cir. 2018).

Relevant inquiry in legislative prayer cases is whether the prayer practice in question fits within the tradition long followed in Congress and the state legislatures; if so, it does not violate the Establishment Clause, even if the prayer is sectarian in nature. U.S. Const. Amend. 1. Satanic Temple, Inc. v. City of Scottsdale, 423 F. Supp. 3d 766 (D. Ariz. 2019).

[END OF SUPPLEMENT]

Footnotes

1

County seal
U.S.—Johnson v. Board of County Com'rs of Bernalillo County, 528 F. Supp. 919 (D.N.M. 1981), decision rev'd on other grounds, 781 F.2d 777 (10th Cir. 1985).
Large cross
Or.—Eugene Sand & Gravel, Inc. v. City of Eugene, 276 Or. 1007, 558 P.2d 338 (1976).
Menorah in traditional public forum
U.S.—Americans United For Separation of Church and State v. City of Grand Rapids, 980 F.2d 1538 (6th Cir. 1992).
Museum presentation of evolutionary theory
U.S.—Crowley v. Smithsonian Inst., 462 F. Supp. 725 (D.D.C. 1978), judgment aff'd, 636 F.2d 738 (D.C. Cir. 1980).
Papal Masses on public land
U.S.—O'Hair v. Andrus, 613 F.2d 931 (D.C. Cir. 1979).
Ten Commandments
In certain contexts, a display of the tablets of the Ten Commandments can convey not simply a religious message but also a secular moral message (about proper standards of social conduct). And in certain contexts, a display of the tablets can also convey a historical message (about a historic relation between those standards and the law)—a fact that helps to explain the display of those tablets in dozens of courthouses throughout the Nation, including the Supreme Court of the United States.
U.S.—Van Orden v. Perry, 545 U.S. 677, 125 S. Ct. 2854, 162 L. Ed. 2d 607 (2005).
A.L.R. Library

State Constitutional Challenges to the Display of Religious Symbols on Public Property, 26 A.L.R.6th 145.
First Amendment Challenges to Display of Religious Symbols on Public Property, 107 A.L.R.5th 1.

2 **Source of funds not decisive**
U.S.—American Civil Liberties Union of Georgia v. Rabun County Chamber of Commerce, Inc., 678 F.2d 1379 (11th Cir. 1982), reh'g denied and opinion modified on other grounds, 698 F.2d 1098 (11th Cir. 1983).

3 **Illuminated cross atop public building**
U.S.—American Civil Liberties Union of Illinois v. City of St. Charles, 622 F. Supp. 1542 (N.D. Ill. 1985), order aff'd, 794 F.2d 265 (7th Cir. 1986).
Large cross
U.S.—American Civil Liberties Union of Georgia v. Rabun County Chamber of Commerce, Inc., 678 F.2d 1379 (11th Cir. 1982), reh'g denied and opinion modified on other grounds, 698 F.2d 1098 (11th Cir. 1983).
Expenditures for papal visit
U.S.—Gilfillan v. City of Philadelphia, 637 F.2d 924 (3d Cir. 1980).
Ten Commandments
While evolution of a Ten Commandments display to include other historical documents could be taken into account when evaluating a claim of secular purpose for the display, counties could be prevented from putting the display in a courthouse where the counties' purpose was to emphasize and celebrate the Ten Commandments' religious message.
U.S.—McCreary County, Ky. v. American Civil Liberties Union of Ky., 545 U.S. 844, 125 S. Ct. 2722, 162 L. Ed. 2d 729, 15 A.L.R. Fed. 2d 865 (2005).

4 U.S.—American Jewish Congress v. City of Beverly Hills, 90 F.3d 379 (9th Cir. 1996).

5 **Large cross**
Okla.—Meyer v. Oklahoma City, 1972 OK 45, 496 P.2d 789 (Okla. 1972).

6 **Chapels at airport**
U.S.—Brashich v. Port Authority of New York and New Jersey, 484 F. Supp. 697 (S.D. N.Y. 1979), aff'd, 628 F.2d 1344 (2d Cir. 1980), opinion issued, 791 F.2d 224 (2d Cir. 1980).

7 Ariz.—Pratt v. Arizona Bd. of Regents, 110 Ariz. 466, 520 P.2d 514 (1974).

8 U.S.—Van Zandt v. Thompson, 839 F.2d 1215 (7th Cir. 1988).

9 U.S.—N.A.A.C.P. v. Hunt, 891 F.2d 1555 (11th Cir. 1990).

10 U.S.—Newdow v. Peterson, 753 F.3d 105 (2d Cir. 2014); Gaylor v. U.S., 74 F.3d 214 (10th Cir. 1996).

11 U.S.—Capitol Square Review and Advisory Bd. v. Pinette, 515 U.S. 753, 115 S. Ct. 2440, 132 L. Ed. 2d 650 (1995).

12 U.S.—American Atheists, Inc. v. Davenport, 637 F.3d 1095 (10th Cir. 2010).
Steel cross in National September 11 Memorial and Museum
U.S.—American Atheists, Inc. v. Port Authority of New York and New Jersey, 760 F.3d 227 (2d Cir. 2014).
Hypothetical construct
The "reasonable observer" test for Establishment Clause violations involving the placement of a religious symbol on public land requires the hypothetical construct of an objective observer who knows all of the pertinent facts and circumstances surrounding the symbol and its placement.
U.S.—Salazar v. Buono, 559 U.S. 700, 130 S. Ct. 1803, 176 L. Ed. 2d 634 (2010).

13 U.S.—American Atheists, Inc. v. Davenport, 637 F.3d 1095 (10th Cir. 2010).

14 U.S.—American Jewish Congress v. City of Chicago, 827 F.2d 120 (7th Cir. 1987).

15 U.S.—Lynch v. Donnelly, 465 U.S. 668, 104 S. Ct. 1355, 79 L. Ed. 2d 604 (1984).

16 **Jaycee sponsored creche**
U.S.—Smith v. Lindstrom, 699 F. Supp. 549 (W.D. Va. 1988), decision aff'd, 895 F.2d 953 (4th Cir. 1990).

17 U.S.—McCreary v. Stone, 739 F.2d 716 (2d Cir. 1984), judgment aff'd, 471 U.S. 83, 105 S. Ct. 1859, 85 L. Ed. 2d 63 (1985).

18 U.S.—Marsh v. Chambers, 463 U.S. 783, 103 S. Ct. 3330, 77 L. Ed. 2d 1019 (1983).

19 U.S.—Bogen v. Doty, 598 F.2d 1110 (8th Cir. 1979).

20 N.H.—Lincoln v. Page, 109 N.H. 30, 241 A.2d 799 (1968).

21 **Absence of involvement of clergy**
N.J.—Marsa v. Wernik, 86 N.J. 232, 430 A.2d 888 (1981).

22 **Policy of nondiscrimination required**
U.S.—Town of Greece, N.Y. v. Galloway, 134 S. Ct. 1811, 188 L. Ed. 2d 835 (2014).

A.L.R. Library

Constitutionality of Legislative Prayer Practices, 30 A.L.R.6th 459.

23 U.S.—Town of Greece, N.Y. v. Galloway, 134 S. Ct. 1811, 188 L. Ed. 2d 835 (2014).

24 U.S.—Town of Greece, N.Y. v. Galloway, 134 S. Ct. 1811, 188 L. Ed. 2d 835 (2014).

25 § 906.

26 Mass.—Colo v. Treasurer and Receiver General, 378 Mass. 550, 392 N.E.2d 1195 (1979).

Particular factors analyzed

U.S.—Marsh v. Chambers, 463 U.S. 783, 103 S. Ct. 3330, 77 L. Ed. 2d 1019 (1983).

27 U.S.—Katcoff v. Marsh, 755 F.2d 223 (2d Cir. 1985).

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16A C.J.S. Constitutional Law § 911

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Constitutional Law
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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

5. Other Particular Subjects

§ 911. Religious societies

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1328 to 1340, 1402, 1403, 1414

In view of the First Amendment, courts may not interfere in administrative or doctrinal church matters.

Civil courts are prohibited by the First Amendment from interfering in purely ecclesiastical or administrative affairs of a church,[1] from inquiring what church rules are,[2] and from determining whether or not they have been correctly applied.[3] Furthermore, it prohibits civil courts from becoming involved in disputes between members of a religious organization that are essentially religious in nature[4] and resolving church disputes on the basis of religious doctrine and practice.[5]

The First Amendment of the Federal Constitution permits hierarchical churches to establish their own rules and regulations for internal discipline and government[6] and to create tribunals for adjudicating disputes over these matters.[7] In view of the provisions of the First Amendment, and similar provisions of state constitutions, respecting freedom of religion, courts are bound by the decisions of the tribunals of hierarchical religious organizations on matters of discipline, faith, internal organizations, or ecclesiastical custom or law[8] even where it is alleged that they are arbitrary.[9] Furthermore, the civil courts do not inquire

whether the hierarchical church governing body has power under religious law to decide disputes relating to church polity.[10] In addition, the courts will defer to decisions of the governing body of congregational churches.[11]

Accordingly, the First Amendment precludes judicial interference with the decisions of authorized church tribunals concerning various particular matters, such as the separation of local congregations from general and regional churches,[12] the selection of the clergy,[13] the defrocking of a minister,[14] internal procedures,[15] quorums,[16] and the expulsion of church members.[17] However, where a church's internal disciplinary decision is tainted by fraud or collusion or constitutes an extreme violation of the disciplined member's civil rights a civil court inquiry is permissible.[18] A finding that a church school breached its employment contract with a teacher did not require a judicial assessment of religious dogma in violation of the Establishment Clause.[19] In any event, the First Amendment precludes civil court jurisdiction of matters that are grounded in activities of a religious body which cannot be imputed to the government.[20]

The protection of the First Amendment does not extend to the secular activities of religious societies[21] so as to exempt them from all statutory regulation.[22] The application of a different standard to determine the jural status of religious societies as opposed to nonreligious organizations in purely secular suits could constitute preference for religion in violation of the Establishment Clause.[23] However, statutes that give special consideration to religious groups are not per se invalid under Establishment Clause, which permits ample room for the accommodation of religion.[24]

Generally speaking, the guaranties of religious freedom do not render churches immune from suit[25] either in contract[26] or in tort.[27] A court may accept jurisdiction over a declaratory judgment action involving a religious society which is capable of being resolved on the basis of religiously neutral principles of law.[28] Thus, in view of its secular nature, a civil court may assume jurisdiction over an employment dispute involving a statutory prohibition against employment discrimination without violating the Free Exercise and the Establishment Clauses.[29]

Defamation.

A court may not entertain a defamation claim involving a church if it involves solely a church member's discipline or excommunication,[30] or flows entirely from an employment dispute between a church and its pastor,[31] or if it requires the evaluation[32] or contradiction[33] of religious tenets. However, a defamation suit against a church or a church member is not barred by the Establishment Clause where a fact finder can determine whether defamation occurred without resorting to theological reflection or inquiring into ecclesiastical matters.[34]

Fraud, collusion, or arbitrariness.

While it has been said that civil courts may intervene in ecclesiastical areas if there is fraud, collusion, or arbitrariness,[35] judicial review of a church's choice of minister has been held not subject to this exception.[36] In any event, while a claim of fraud may not be made against a religious institution or its personnel if it rests on a representation of a religious doctrine or belief,[37] a fraud action may be maintained against a religious institution where there is no connection to matters of religious doctrine.[38]

Record-keeping and production of documents.

Judicial enforcement of a statutory requirement that a church keep at its registered office corporate records for examination by its voting members does not offend First Amendment principles.[39] A summons issued by the Internal Revenue Service for the

production of church documents which is not overly broad does not infringe on the First Amendment freedom of religion.[40] Furthermore, it is not a burden on the exercise of religion for a court to enforce such a summons in connection with a claim of tax-exempt status.[41]

CUMULATIVE SUPPLEMENT

Cases:

"Ecclesiastical matter," which civil court is prohibited, based on Establishment Clause and Free Exercise Clause of the First Amendment, from becoming entangled in, is one which concerns doctrine, creed, or form of worship of the church, or the adoption and enforcement within religious association of needful laws and regulations for government of membership, and power of excluding from such associations those deemed unworthy of membership by the legally constituted authorities of church. U.S.C.A. Const.Amend. 1. Doe v. Diocese of Raleigh, 776 S.E.2d 29 (N.C. Ct. App. 2015).

Disgruntled church members cannot circumvent ecclesiastical immunity under the Free Exercise Clause of the First Amendment by suing church members rather than the religious body itself, else it would be an empty protection, and there would be an inappropriate chilling effect on the ability of churches to discipline their members. U.S.C.A. Const. Amends. 1, 14. Singh v. Sandhar, 495 S.W.3d 482 (Tex. App. Houston 14th Dist. 2016).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Church of Scientology of California v. Siegelman, 475 F. Supp. 950 (S.D. N.Y. 1979).
Pa.—In re Laning's Estate, 462 Pa. 157, 339 A.2d 520, 89 A.L.R.3d 972 (1975).
Tex.—Hill v. Sargent, 615 S.W.2d 300 (Tex. Civ. App. Dallas 1981).

2 U.S.—Taffs v. U.S., 208 F.2d 329 (8th Cir. 1953).
La.—United Pentecostal Church Intern., Inc. v. Sanderson, 391 So. 2d 1293 (La. Ct. App. 2d Cir. 1980), writ denied, 395 So. 2d 682 (La. 1981).
Ill.—Eddy ex rel. Pfeifer v. Christian Science Bd. of Directors, 62 Ill. App. 3d 918, 19 Ill. Dec. 781, 379 N.E.2d 653 (1st Dist. 1978).
Interpreting Bible
Mo.—Morrison v. State, 252 S.W.2d 97 (Mo. Ct. App. 1952).
Inquiry into "Book of Order"
Md.—Calvary Presbyterian Church of Baltimore City v. Presbytery of Baltimore of United Presbyterian Church in U.S., 39 Md. App. 405, 386 A.2d 357 (1978).

3 La.—United Pentecostal Church Intern., Inc. v. Sanderson, 391 So. 2d 1293 (La. Ct. App. 2d Cir. 1980), writ denied, 395 So. 2d 682 (La. 1981).
Okla.—Gelder v. Loomis, 1980 OK 10, 605 P.2d 1330 (Okla. 1980).

4 Ark.—Viravonga v. Samakitham, 372 Ark. 562, 279 S.W.3d 44 (2008).

5 U.S.—Jones v. Wolf, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979).
La.—United Pentecostal Church Intern., Inc. v. Sanderson, 391 So. 2d 1293 (La. Ct. App. 2d Cir. 1980), writ denied, 395 So. 2d 682 (La. 1981).
Tex.—Waters v. Hargest, 593 S.W.2d 364 (Tex. Civ. App. Texarkana 1979).

6 U.S.—Serbian Eastern Orthodox Diocese for U. S. of America and Canada v. Milivojevich, 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976).
Kan.—Church of God in Christ, Inc. v. Board of Trustees of Emmanuel Church of God in Christ, Wichita, 47 Kan. App. 2d 674, 280 P.3d 795 (2012).

Mass.—Antioch Temple, Inc. v. Parekh, 383 Mass. 854, 422 N.E.2d 1337 (1981) (overruled on other grounds by, Callahan v. First Congregational Church Of Haverhill, 441 Mass. 699, 808 N.E.2d 301 (2004)).

7 U.S.—Serbian Eastern Orthodox Diocese for U. S. of America and Canada v. Milivojevich, 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976).

Kan.—Church of God in Christ, Inc. v. Board of Trustees of Emmanuel Church of God in Christ, Wichita, 47 Kan. App. 2d 674, 280 P.3d 795 (2012).

Mass.—Antioch Temple, Inc. v. Parekh, 383 Mass. 854, 422 N.E.2d 1337 (1981) (overruled on other grounds by, Callahan v. First Congregational Church Of Haverhill, 441 Mass. 699, 808 N.E.2d 301 (2004)).

8 U.S.—Jones v. Wolf, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979).

Nev.—Tea v. Protestant Episcopal Church in Diocese of Nevada, 96 Nev. 399, 610 P.2d 182 (1980).

9 U.S.—Serbian Eastern Orthodox Diocese for U. S. of America and Canada v. Milivojevich, 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976).

W. Va.—Board of Church Extension v. Eads, 159 W. Va. 943, 230 S.E.2d 911 (1976).

10 U.S.—Serbian Eastern Orthodox Diocese for U. S. of America and Canada v. Milivojevich, 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976).

11 Tex.—Hill v. Sargent, 615 S.W.2d 300 (Tex. Civ. App. Dallas 1981).

12 Md.—Maryland and Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc., 254 Md. 162, 254 A.2d 162 (1969).

13 U.S.—Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America, 344 U.S. 94, 73 S. Ct. 143, 97 L. Ed. 120 (1952).

La.—United Pentecostal Church Intern., Inc. v. Sanderson, 391 So. 2d 1293 (La. Ct. App. 2d Cir. 1980), writ denied, 395 So. 2d 682 (La. 1981).

Ohio—Dragelevich v. Rajsich, 24 Ohio App. 2d 59, 53 Ohio Op. 2d 186, 263 N.E.2d 778 (7th Dist. Mahoning County 1970).

14 U.S.—Serbian Eastern Orthodox Diocese for U. S. of America and Canada v. Milivojevich, 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976); 40th St. and Fairmount Ave. Church of God v. Stover, 316 F. Supp. 375 (E.D. Pa. 1970).

Ohio—Dragelevich v. Rajsich, 24 Ohio App. 2d 59, 53 Ohio Op. 2d 186, 263 N.E.2d 778 (7th Dist. Mahoning County 1970).

15 Ga.—God's Hope Builders, Inc. v. Mount Zion Baptist Church of Oxford, Georgia, Inc., 321 Ga. App. 435, 741 S.E.2d 185 (2013).

16 Ga.—God's Hope Builders, Inc. v. Mount Zion Baptist Church of Oxford, Georgia, Inc., 321 Ga. App. 435, 741 S.E.2d 185 (2013).

17 U.S.—Nunn v. Black, 506 F. Supp. 444 (W.D. Va. 1981), aff'd, 661 F.2d 925 (4th Cir. 1981).

Ga.—God's Hope Builders, Inc. v. Mount Zion Baptist Church of Oxford, Georgia, Inc., 321 Ga. App. 435, 741 S.E.2d 185 (2013).

La.—United Pentecostal Church Intern., Inc. v. Sanderson, 391 So. 2d 1293 (La. Ct. App. 2d Cir. 1980), writ denied, 395 So. 2d 682 (La. 1981).

N.Y.—Ming Tung v. China Buddhist Ass'n, 124 A.D.3d 13, 996 N.Y.S.2d 236 (1st Dep't 2014), appeal dismissed, 2015 WL 1423450 (N.Y. 2015).

18 U.S.—First Baptist Church of Glen Este v. State of Ohio, 591 F. Supp. 676 (S.D. Ohio 1983).

19 U.S.—Gargano v. Diocese of Rockville Centre, 80 F.3d 87, 108 Ed. Law Rep. 78 (2d Cir. 1996).

20 **Remuneration of faculty members**

U.S.—Broderick v. Catholic University of America, 429 U.S. 821, 97 S. Ct. 68, 50 L. Ed. 2d 81 (1976).

21 Cal.—Queen of Angels Hospital v. Younger, 66 Cal. App. 3d 359, 136 Cal. Rptr. 36 (2d Dist. 1977).

22 U.S.—Van Schaick v. Church of Scientology of California, Inc., 535 F. Supp. 1125 (D. Mass. 1982).

Ill.—Galich v. Catholic Bishop of Chicago, 75 Ill. App. 3d 538, 31 Ill. Dec. 370, 394 N.E.2d 572 (1st Dist. 1979).

23 Cal.—Barr v. United Methodist Church, 90 Cal. App. 3d 259, 153 Cal. Rptr. 322 (4th Dist. 1979).

24 U.S.—Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos, 483 U.S. 327, 107 S. Ct. 2862, 97 L. Ed. 2d 273 (1987).

25 Cal.—Barr v. United Methodist Church, 90 Cal. App. 3d 259, 153 Cal. Rptr. 322 (4th Dist. 1979).

26 N.C.—Braswell v. Purser, 282 N.C. 388, 193 S.E.2d 90 (1972).

27 U.S.—Van Schaick v. Church of Scientology of California, Inc., 535 F. Supp. 1125 (D. Mass. 1982).
A.L.R. Library
Free exercise of religion clause of First Amendment as defense to tort liability, 93 A.L.R. Fed. 754.

28 **Extension of employment contract of rabbi**
N.Y.—Zimbler v. Felber, 111 Misc. 2d 867, 445 N.Y.S.2d 366 (Sup 1981).

29 U.S.—E.E.O.C. (U.S.A.) v. Pacific Press Pub. Ass'n, 482 F. Supp. 1291 (N.D. Cal. 1979), judgment aff'd, 676 F.2d 1272 (9th Cir. 1982).

30 Iowa—Kliebenstein v. Iowa Conference of United Methodist Church, 663 N.W.2d 404 (Iowa 2003).

31 Ala.—Ex parte Bole, 103 So. 3d 40 (Ala. 2012).
D.C.—Heard v. Johnson, 810 A.2d 871 (D.C. 2002).
A.L.R. Library
Defamation of Member of Clergy, 108 A.L.R.5th 495.

32 U.S.—Kavanagh v. Zwilling, 997 F. Supp. 2d 241 (S.D. N.Y. 2014), judgment aff'd, 578 Fed. Appx. 24 (2d Cir. 2014).
Haw.—O'Connor v. Diocese of Honolulu, 77 Haw. 383, 885 P.2d 361 (1994).
Md.—Bourne v. Center on Children, Inc., 154 Md. App. 42, 838 A.2d 371 (2003).
N.Y.—Holy Spirit Ass'n for Unification of World Christianity v. Harper & Row, Publishers, Inc., 101 Misc. 2d 30, 420 N.Y.S.2d 56 (Sup 1979).

33 **Disfellowshipping of members**
Mont. Rasmussen v. Bennett, 228 Mont. 106, 741 P.2d 755 (1987).

34 U.S.—Church of Scientology of California v. Siegelman, 475 F. Supp. 950 (S.D. N.Y. 1979).
Ga.—Giles v. Heyward, 315 Ga. App. 409, 726 S.E.2d 434 (2012).
Iowa—Kliebenstein v. Iowa Conference of United Methodist Church, 663 N.W.2d 404 (Iowa 2003).
No carte blanche to defame
Fla.—Bilbrey v. Myers, 91 So. 3d 887 (Fla. 5th DCA 2012).

35 Ky.—Music v. United Methodist Church, 864 S.W.2d 286 (Ky. 1993) (abrogated on other grounds by, St. Joseph Catholic Orphan Society v. Edwards, 449 S.W.3d 727 (Ky. 2014)).

36 Colo.—Van Osdol v. Vogt, 908 P.2d 1122 (Colo. 1996).

37 Haw.—O'Connor v. Diocese of Honolulu, 77 Haw. 383, 885 P.2d 361 (1994).
Tex.—Tilton v. Marshall, 925 S.W.2d 672 (Tex. 1996).

38 Cal.—Molko v. Holy Spirit Assn., 46 Cal. 3d 1092, 252 Cal. Rptr. 122, 762 P.2d 46 (1988), as modified on denial of reh'g, (Dec. 1, 1988).
Miss.—Mabus v. St. James Episcopal Church, 884 So. 2d 747 (Miss. 2004), order aff'd, 13 So. 3d 260 (Miss. 2009).

39 La.—Bourgeois v. Landrum, 396 So. 2d 1275 (La. 1981).

40 U.S.—U.S. v. Norcutt, 680 F.2d 54 (8th Cir. 1982).

41 U.S.—U.S. v. Freedom Church, 613 F.2d 316 (1st Cir. 1979); U.S. v. Grayson County State Bank, 656 F.2d 1070 (5th Cir. 1981); U.S. v. Holmes, 614 F.2d 985 (5th Cir. 1980).
Church as intervenor
U.S.—U.S. v. City Bank, 527 F. Supp. 523 (N.D. Ohio 1981).

End of Document

16A C.J.S. Constitutional Law § 912

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

5. Other Particular Subjects

§ 912. Religious societies—Infliction of emotional distress; sexual harassment or abuse

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1337

Various matters have been adjudicated with respect to the power of the courts to rule on tort claims by members or religious organizations against the organization or other members.

While First Amendment guaranties have been held to protect a religious organization in an action alleging the torts of intentional infliction of emotional distress,[1] there is also authority allowing courts to rule in matters pertaining to negligent[2] and intentional[3] infliction of emotional distress by members or personnel of religious institutions where matters of religious doctrine are not at issue.

Sexual harassment or abuse.

A sexual harassment claim may be brought by a former pastor against a church where the claim is unrelated to pastoral qualifications or issues of church doctrine, and only monetary damages are sought.[4] And it has been said with respect to fraudulent concealment of knowledge of illegal sexual abuse of children by a former priest that a religious institution may not hide behind the First Amendment when perpetrating a fraud upon the public or its members.[5] However, actions against religious

institutions based on alleged sexual abuse have also been treated as barred by the First Amendment because of inevitable entanglement with questions or religious doctrine.[6]

CUMULATIVE SUPPLEMENT

Cases:

First Amendment Free Exercise Clause barred claim against religious organization by former member for intentional infliction of emotional distress under New Mexico law, where organization's efforts to ostracize former member stemmed from internal dispute between former member and organization prompted by former member's resistance to organization directives, organization's prevailing practice regarding dissenting members was to publish maligning statements about them intended to cause emotional and psychological trauma, and to isolate them, and maligning statements had arisen in context of organization relating to members reasons why former member's membership had been terminated; claim arose from internal religious dispute involving shunning. U.S. Const. Amend. 1. Hubbard v. J Message Group Corp., 325 F. Supp. 3d 1198 (D.N.M. 2018).

[END OF SUPPLEMENT]

Footnotes

1 Ala.—Ex parte Bole, 103 So. 3d 40 (Ala. 2012).
Mass.—Murphy v. I.S.K. Con. of New England, Inc., 409 Mass. 842, 571 N.E.2d 340 (1991).
Mo.—Gibson v. Brewer, 952 S.W.2d 239 (Mo. 1997).

2 Alaska—Sands v. Living Word Fellowship, 34 P.3d 955 (Alaska 2001).

3 Alaska—Sands v. Living Word Fellowship, 34 P.3d 955 (Alaska 2001).
Miss.—Roman Catholic Diocese of Jackson v. Morrison, 905 So. 2d 1213 (Miss. 2005).

4 Minn.—Black v. Snyder, 471 N.W.2d 715 (Minn. Ct. App. 1991).

5 Miss.—Roman Catholic Diocese of Jackson v. Morrison, 905 So. 2d 1213 (Miss. 2005).

6 Mo.—H.R.B. v. J.L.G., 913 S.W.2d 92, 106 Ed. Law Rep. 415 (Mo. Ct. App. E.D. 1995).
Encouraging church member not to report abuse
Utah—Franco v. The Church of Jesus Christ of Latter-day Saints, 2001 UT 25, 21 P.3d 198 (Utah 2001).

16A C.J.S. Constitutional Law § 913

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

5. Other Particular Subjects

§ 913. Religious societies—Property disputes

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1338

Church property disputes may be resolved by civil courts by the application of neutral principles of law without violating the First Amendment.

Civil courts do not inhibit the free exercise of religion by determining disputes involving church property.[1] However, while the First Amendment does not dictate that a state must follow a particular method of resolving church property disputes,[2] it nevertheless severely circumscribes the role that civil courts may play.[3] Courts may not resolve church property disputes on the basis of religious doctrine or practice, church polity, or church administration,[4] but they may, for instance,[5] apply neutral principles of law such as are generally applicable to property disputes.[6] Thus, in adjudicating property disputes, courts may rely on state statutory law,[7] church constitutions,[8] deeds,[9] local church charters,[10] and articles of incorporation,[11] as well as on existing contractual obligations between a central church authority and a local church.[12]

Furthermore, while a court may not determine property disputes on the basis of whether or not a church or a group of adherents has departed from a particular religious doctrine without violating First Amendment precepts,[13] it may make an identity

determination as to which contesting group represents a particular church.[14] The adoption of a presumptive rule of representation of a religious society by a majority of its members, defeasible upon a showing that the identity of the local church is to be determined by some other means, in resolving church property disputes, has been accepted as consistent with the neutral-principles analysis and the First Amendment.[15]

Hierarchical approach; hybrid approach.

As an alternative to the neutral principles of law approach, a state may follow the hierarchical approach, which simply defers to the decision of the higher authorities within the church,[16] or a hybrid approach.[17] If the interpretation of the instruments of ownership would require the court to resolve a religious controversy in a church-property dispute, then deference to the resolution of the doctrinal issue by the authoritative ecclesiastical body is required.[18]

Private property disputes.

The rule that a civil court may not inquire into church property disputes which involve controversies over religious doctrine and practice extends to private property disputes involving a religious society.[19]

Footnotes

1 U.S.—Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969).
La.—United Pentecostal Church Intern., Inc. v. Sanderson, 391 So. 2d 1293 (La. Ct. App. 2d Cir. 1980), writ denied, 395 So. 2d 682 (La. 1981).
N.Y.—Russian Church of Our Lady of Kazan v. Dunkel, 33 N.Y.2d 456, 354 N.Y.S.2d 631, 310 N.E.2d 307 (1974).

2 Cal.—In re Episcopal Church Cases, 45 Cal. 4th 467, 87 Cal. Rptr. 3d 275, 198 P.3d 66 (2009), as modified, (Feb. 25, 2009).

3 U.S.—Jones v. Wolf, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979).
La.—Fluker Community Church v. Hitchens, 419 So. 2d 445 (La. 1982).
Md.—First Baptist Church Of Friendly v. Beeson, 154 Md. App. 650, 841 A.2d 347 (2004).

4 U.S.—Jones v. Wolf, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979).
Ala.—Ex parte Central Alabama Conference, 860 So. 2d 865 (Ala. 2003).
D.C.—Williams v. Board of Trustees of Mount Jezreel Baptist Church, 589 A.2d 901 (D.C. 1991).
Md.—First Baptist Church Of Friendly v. Beeson, 154 Md. App. 650, 841 A.2d 347 (2004).
N.J.—Ran-Dav's County Kosher, Inc. v. State, 129 N.J. 141, 608 A.2d 1353 (1992).
Religious doctrine and practice
Ark.—Viravonga v. Samakitham, 372 Ark. 562, 279 S.W.3d 44 (2008).
Cal.—Roman Catholic Bishop of San Jose v. Bowen, 219 Cal. App. 4th 484, 162 Cal. Rptr. 3d 32 (3d Dist. 2013).
Identity of governing body; allocation of power
Cal.—Samoan Congregational etc. Church In U.S. v. Samoan Congregational etc. Church of Oceanside, 66 Cal. App. 3d 69, 135 Cal. Rptr. 793 (4th Dist. 1977).
Implied trust in favor of adherents
Md.—Maryland and Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc., 254 Md. 162, 254 A.2d 162 (1969).

5 **Approach as optional**
Ga.—Rector, Wardens, Vestrymen of Christ Church in Savannah v. Bishop of Episcopal Diocese of Georgia, Inc., 290 Ga. 95, 718 S.E.2d 237 (2011).

6 U.S.—Jones v. Wolf, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979).
Ark.—Viravonga v. Samakitham, 372 Ark. 562, 279 S.W.3d 44 (2008).
Cal.—Roman Catholic Bishop of San Jose v. Bowen, 219 Cal. App. 4th 484, 162 Cal. Rptr. 3d 32 (3d Dist. 2013).
Conn.—Episcopal Church in Diocese of Connecticut v. Gauss, 302 Conn. 408, 28 A.3d 302 (2011).
Ind.—Presbytery of Ohio Valley, Inc. v. OPC, Inc., 973 N.E.2d 1099 (Ind. 2012), cert. denied, 133 S. Ct. 2022, 185 L. Ed. 2d 885 (2013).
Mass.—Maffei v. Roman Catholic Archbishop of Boston, 449 Mass. 235, 867 N.E.2d 300 (2007).
Mont.—Second Intern. Baha"i Council v. Chase, 2005 MT 30, 326 Mont. 41, 106 P.3d 1168 (2005).
N.H.—Berthiaume v. McCormack, 153 N.H. 239, 891 A.2d 539 (2006).
N.Y.—Ming Tung v. China Buddhist Ass'n, 124 A.D.3d 13, 996 N.Y.S.2d 236 (1st Dep't 2014), appeal dismissed, 2015 WL 1423450 (N.Y. 2015).
Ohio—Eastminster Presbytery v. Stark & Knoll, 2012-Ohio-900, 2012 WL 723331 (Ohio Ct. App. 9th Dist. Summit County 2012).
S.C.—All Saints Parish Waccamaw v. Protestant Episcopal Church in Diocese of South Carolina, 385 S.C. 428, 685 S.E.2d 163 (2009).
Tex.—C.L. Westbrook, Jr. v. Penley, 231 S.W.3d 389 (Tex. 2007).
Va.—Falls Church v. Protestant Episcopal Church in U.S., 285 Va. 651, 740 S.E.2d 530 (2013), cert. denied, 134 S. Ct. 1513, 188 L. Ed. 2d 449 (2014).

7 U.S.—Jones v. Wolf, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979).
La.—Fluker Community Church v. Hitchens, 419 So. 2d 445 (La. 1982).
Va.—Norfolk Presbytery v. Bollinger, 214 Va. 500, 201 S.E.2d 752 (1974).

8 U.S.—Jones v. Wolf, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979).
La.—Fluker Community Church v. Hitchens, 419 So. 2d 445 (La. 1982).
Va.—Norfolk Presbytery v. Bollinger, 214 Va. 500, 201 S.E.2d 752 (1974).

9 U.S.—Jones v. Wolf, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979).
La.—Fluker Community Church v. Hitchens, 419 So. 2d 445 (La. 1982).
W. Va.—Brady v. Reiner, 157 W. Va. 10, 198 S.E.2d 812 (1973) (overruled on other grounds by, Board of Church Extension v. Eads, 159 W. Va. 943, 230 S.E.2d 911 (1976)).

10 U.S.—Jones v. Wolf, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979).
La.—Fluker Community Church v. Hitchens, 419 So. 2d 445 (La. 1982).
Implied trust
Tenn.—Fairmount Presbyterian Church, Inc. v. Presbytery of Holston of Presbyterian Church of U. S., 531 S.W.2d 301 (Tenn. Ct. App. 1975).

11 Md.—Maryland and Virginia Eldership of Churches of God v. Church of God at Sharpsburg, Inc., 254 Md. 162, 254 A.2d 162 (1969).
Dissolution
Cal.—In re Metropolitan Baptist Church of Richmond, Inc., 48 Cal. App. 3d 850, 121 Cal. Rptr. 899 (1st Dist. 1975).

12 Pa.—Western Pennsylvania Conference of United Methodist Church v. Everson Evangelical Church of North America, 454 Pa. 434, 312 A.2d 35 (1973).

13 U.S.—Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969).
Pa.—Erie Conference Central Office v. Burdick, 440 Pa. 136, 269 A.2d 735 (1970).
Tex.—Parker v. Kilgore, 561 S.W.2d 624 (Tex. Civ. App. Beaumont 1978).

14 S.C.—Adickes v. Adkins, 264 S.C. 394, 215 S.E.2d 442 (1975).

15 U.S.—Jones v. Wolf, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979).
La.—Fluker Community Church v. Hitchens, 419 So. 2d 445 (La. 1982).

16 Ga.—Rector, Wardens, Vestrymen of Christ Church in Savannah v. Bishop of Episcopal Diocese of Georgia, Inc., 290 Ga. 95, 718 S.E.2d 237 (2011).
Mich.—Chabad-Lubavitch of Michigan v. Schuchman, 305 Mich. App. 337, 853 N.W.2d 390 (2014).
Wash.—Choi v. Sung, 154 Wash. App. 303, 225 P.3d 425 (Div. 2 2010).

17 Ga.—Rector, Wardens, Vestrymen of Christ Church in Savannah v. Bishop of Episcopal Diocese of Georgia, Inc., 290 Ga. 95, 718 S.E.2d 237 (2011).

18 Ind.—Presbytery of Ohio Valley, Inc. v. OPC, Inc., 973 N.E.2d 1099 (Ind. 2012), cert. denied, 133 S. Ct. 2022, 185 L. Ed. 2d 885 (2013).

19 **Contract rights relating to effect of excommunication**

Mich.—Wiethoff v. St. Veronica School, 48 Mich. App. 163, 210 N.W.2d 108 (1973).

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16A C.J.S. Constitutional Law § 914

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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

5. Other Particular Subjects

§ 914. Regulation of use of private property

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1401 to 1403

Without violating religious freedom, churches may not be entirely excluded from residential areas, but their location and use may be regulated; restrictive covenants barring churches, and condemnations of churches, have been upheld.

The zoning power may not be used to deny the constitutional right to freedom of religion by the chilling application of the zoning laws.[1] The exclusion of a church from a residential area by a zoning regulation violates the fundamental right of freedom of worship, according to some,[2] but not all,[3] authorities. The affirmative rule is particularly applicable where the exclusion has no tangible relation to the public health, safety, morals, or general welfare.[4] However, notwithstanding such constitutional guaranties, churches are nevertheless subject to reasonable zoning regulation as to their location,[5] construction,[6] and the use of their properties;[7] are subject to building codes[8] and fire safety standards;[9] and must submit to building, fire, and zoning inspections to the same extent as other institutions.[10] However, various activities with a religious purpose, beyond prayer, have been found to be within the perimeter of protected religious activity for zoning law purposes.[11]

When a conflict arises between the First Amendment guaranty of religious freedom and legitimate zoning concerns, an effort is to be made to accommodate the special, protected status which religious uses enjoy,[12] and to mitigate the adverse effect of such uses upon a community;[13] on the other hand, incidental infringement upon religious expression is also constitutionally permissible in order to reasonably accommodate legitimate zoning concerns.[14] However, the Free Exercise Clause does not protect worship where it causes a public disturbance,[15] and neither does it protect the residence in single family residential zones of religious societies composed of priests and laymen.[16]

A zoning change or issuance of a special use permit does not create an entanglement between government and religion just because the landowner or operator is a religious organization.[17]

Consent of church as condition.

A statute giving a church authority to veto applications for liquor licenses to be used on particular premises constitutes a violation of the Establishment Clause.[18]

Eminent domain.

Church property is private property which can be taken by eminent domain for paramount public use, without interfering with religious freedom, at least in the absence of a showing that the property is sui generis.[19]

Historical landmark designation.

While the mere fact that a landmark designation or a single-parcel historic district applies only to a house of worship does not in itself constitute a targeting of religion that offends the First Amendment,[20] a church's designation as landmark, imposing specific controls upon its ability to alter[21] or sell[22] the structure, has been held to violate the church's right to freely exercise religion. Furthermore, statutory provisions allowing an optional hardship exemption from landmark designation for property of religious organizations have been held not to result in excessive governmental entanglement with religion or to delegate substantial governmental authority to religious bodies.[23]

Restrictive covenants.

Restrictive covenants which limit the use of properties to residential use are enforceable against religious institutions without violating religious liberty under some,[24] but not all,[25] authorities.

CUMULATIVE SUPPLEMENT

Cases:

Condition of conditional use permit (CUP), granted by city to church to build church building in residential zone, requiring church to install fence, designed to prevent churchgoers from unauthorized use of city-owned property, across face of church property adjacent to city-owned property, was not improper exaction; city's land development code (LDC) allowed planning commission to impose conditions on conditional use that were necessary to accomplish purposes of comprehensive plan and LDC, included, but not limited to, adequate ingress and egress and other on-site or off-site projected related improvements. Church of Our Savior v. City of Jacksonville Beach, 108 F. Supp. 3d 1259 (M.D. Fla. 2015).

Village zoning law, which placed restrictions on places of worship, was constitutional, pursuant to Free Exercise Clause, under rational basis analysis; village had legitimate governmental purpose of maintaining integrity of its zoning scheme and residential character of village, and law regulated building area, building height, building and parking area setbacks from property lines, screening, and traffic circulation to address potential adverse impacts of large institutional facilities on residential nature of village. U.S.C.A. Const.Amend. 1. Roman Catholic Diocese of Rockville Centre, N.Y. v. Incorporated Village of Old Westbury, 128 F. Supp. 3d 566 (E.D. N.Y. 2015).

Board of Zoning Appeals' decision to rescind, for one-year trial period, restrictive covenants that precluded use of Jewish synagogue on weekdays, conditioned upon synagogue applying to village Board of Trustees for limited street parking, was rationally related to special treatment afforded to religious entities seeking to expand in residential areas, and to board's efforts to seek compromise that would permit use while preserving character of surrounding neighborhood. Septimus v. Board of Zoning Appeals for Inc. Village of Lawrence, 22 N.Y.S.3d 815 (Sup 2015).

[END OF SUPPLEMENT]

Footnotes

1 N.Y.—American Friends of Society of St. Pius, Inc. v. Schwab, 68 A.D.2d 646, 417 N.Y.S.2d 991 (2d Dep't 1979).
A.L.R. Library
What constitutes accessory or incidental use of religious or educational property within zoning ordinance, 11 A.L.R.4th 1084.

2 Ind.—Church of Christ in Indianapolis v. Metropolitan Bd. of Zoning Appeals of Marion County (Division I), 175 Ind. App. 346, 371 N.E.2d 1331 (1978).
Necessity for special use permit
U.S.—Holy Spirit Ass'n for the Unification of World Christianity v. Town of New Castle, 480 F. Supp. 1212 (S.D. N.Y. 1979).
A.L.R. Library
What constitutes accessory or incidental use of religious or educational property within zoning ordinance, 11 A.L.R.4th 1084.
What constitutes "church," "religious use," or the like within zoning ordinance, 62 A.L.R.3d 197.

3 Cal.—Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. City of Porterville, 90 Cal. App. 2d 656, 203 P.2d 823 (4th Dist. 1949).

4 Tex.—Simms v. City of Sherman, 181 S.W.2d 100 (Tex. Civ. App. Dallas 1944), judgment aff'd, 143 Tex. 115, 183 S.W.2d 415 (1944).

5 U.S.—Bethel World Outreach Ministries v. Montgomery County Council, 706 F.3d 548 (4th Cir. 2013).
Ill.—Diakonian Soc. v. City of Chicago Zoning Bd. of Appeals, 63 Ill. App. 3d 823, 20 Ill. Dec. 634, 380 N.E.2d 843 (1st Dist. 1978).
Buddhist society's standing to challenge denial of exemption
Conn.—Cambodian Buddhist Soc. of Connecticut, Inc. v. Planning and Zoning Com'n of Town of Newtown, 285 Conn. 381, 941 A.2d 868 (2008).

6 **Payment for public improvements**
Colo.—Bethlehem Evangelical Lutheran Church v. City of Lakewood, 626 P.2d 668 (Colo. 1981).
Set-back requirements
Ind.—Board of Zoning Appeals of Decatur v. Decatur, Ind. Co. of Jehovah's Witnesses, 233 Ind. 83, 117 N.E.2d 115 (1954).
N.Y.—Westchester Reform Temple v. Brown, 22 N.Y.2d 488, 293 N.Y.S.2d 297, 239 N.E.2d 891 (1968).

7 Wash.—Open Door Baptist Church v. Clark County, 140 Wash. 2d 143, 995 P.2d 33 (2000).
Denial of church and accessory use permit

Or.—Christian Retreat Center v. Board of County Com'rs for Washington County, 28 Or. App. 673, 560 P.2d 1100 (1977) (disapproved of on other grounds by, Younger v. City of Portland, 305 Or. 346, 752 P.2d 262 (1988)).

Parochial school on church site

Or.—Damascus Community Church v. Clackamas County, 45 Or. App. 1065, 610 P.2d 273 (1980).

8 Mass.—Faith Assembly of God of South Dennis and Hyannis, Inc. v. State Bldg. Code Commission, 11 Mass. App. Ct. 333, 416 N.E.2d 228 (1981).

Inspections

U.S.—Tony and Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290, 105 S. Ct. 1953, 85 L. Ed. 2d 278 (1985).

Enforcement

Wash.—City of Sumner v. First Baptist Church of Sumner, Wash., 97 Wash. 2d 1, 639 P.2d 1358, 2 Ed. Law Rep. 589 (1982).

9 Mich.—Hough v. North Star Baptist Church, 109 Mich. App. 780, 312 N.W.2d 158, 1 Ed. Law Rep. 415 (1981).

Inspections

U.S.—Tony and Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290, 105 S. Ct. 1953, 85 L. Ed. 2d 278 (1985).

10 U.S.—Tony and Susan Alamo Foundation v. Secretary of Labor, 471 U.S. 290, 105 S. Ct. 1953, 85 L. Ed. 2d 278 (1985).

11 **Day care center**

N.Y.—Unitarian Universalist Church of Central Nassau v. Shorten, 63 Misc. 2d 978, 314 N.Y.S.2d 66 (Sup 1970).

Sleeping accommodations

Conn.—Havurah v. Zoning Bd. of Appeals of Town of Norfolk, 177 Conn. 440, 418 A.2d 82, 11 A.L.R.4th 1072 (1979).

12 N.Y.—Westchester Reform Temple v. Brown, 22 N.Y.2d 488, 293 N.Y.S.2d 297, 239 N.E.2d 891 (1968).

13 **Off-street parking**

Ind.—Board of Zoning Appeals of Decatur v. Decatur, Ind. Co. of Jehovah's Witnesses, 233 Ind. 83, 117 N.E.2d 115 (1954).

14 U.S.—Holy Spirit Ass'n for the Unification of World Christianity v. Town of New Castle, 480 F. Supp. 1212 (S.D. N.Y. 1979).

N.J.—State v. Cameron, 184 N.J. Super. 66, 445 A.2d 75 (Law Div. 1982), judgment aff'd, 189 N.J. Super. 404, 460 A.2d 191 (App. Div. 1983), judgment rev'd on other grounds, 100 N.J. 586, 498 A.2d 1217 (1985).

Off-street parking of buses

Colo.—East Side Baptist Church of Denver, Inc. v. Klein, 175 Colo. 168, 487 P.2d 549 (1971).

15 S.C.—Morison v. Rawlinson, 193 S.C. 25, 7 S.E.2d 635 (1940).

16 Mo.—Association for Educational Development v. Hayward, 533 S.W.2d 579 (Mo. 1976).

17 Cal.—Foothill Communities Coalition v. County of Orange, 222 Cal. App. 4th 1302, 166 Cal. Rptr. 3d 627 (4th Dist. 2014), review denied, (Apr. 30, 2014).

18 U.S.—Larkin v. Grendel's Den, Inc., 459 U.S. 116, 103 S. Ct. 505, 74 L. Ed. 2d 297 (1982).

19 Colo.—Denver Urban Renewal Authority v. Pillar of Fire, 191 Colo. 238, 552 P.2d 23 (1976).

20 U.S.—Roman Catholic Bishop of Springfield v. City of Springfield, 724 F.3d 78 (1st Cir. 2013).

21 Mass.—Society of Jesus of New England v. Boston Landmarks Com'n, 409 Mass. 38, 564 N.E.2d 571 (1990).

Wash.—First Covenant Church of Seattle v. City of Seattle, 120 Wash. 2d 203, 840 P.2d 174 (1992).

22 Wash.—First United Methodist Church of Seattle v. Hearing Examiner for Seattle Landmarks Preservation Bd., 129 Wash. 2d 238, 916 P.2d 374 (1996).

23 Cal.—East Bay Asian Local Development Corp. v. State of California, 24 Cal. 4th 693, 102 Cal. Rptr. 2d 280, 13 P.3d 1122 (2000).

24 N.Y.—Ginsberg v. Yeshiva Of Far Rockaway, 45 A.D.2d 334, 358 N.Y.S.2d 477 (2d Dep't 1974), order aff'd, 36 N.Y.2d 706, 366 N.Y.S.2d 418, 325 N.E.2d 876 (1975).

Tenn.—McDonald v. Chaffin, 529 S.W.2d 54 (Tenn. Ct. App. 1975).

Tex.—Ireland v. Bible Baptist Church, 480 S.W.2d 467 (Tex. Civ. App. Beaumont 1972), writ refused n.r.e., (Oct. 4, 1972).

25 Ohio—West Hill Baptist Church v. Abbate, 24 Ohio Misc. 66, 53 Ohio Op. 2d 107, 261 N.E.2d 196 (C.P. 1969).

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16A C.J.S. Constitutional Law § 915

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Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

5. Other Particular Subjects

§ 915. Military draft

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1325, 1326

Exemption from military service on the basis of conscientious objections is not required by the Constitution, and the statutory provision therefor does not violate the First Amendment.

The courts have stated that the right to the free exercise of religion is subject to the power of Congress to raise and support armies.[1] Decisions during the Vietnam Era held that the requirement of registration for compulsory military training and service does not violate the free exercise of religion,[2] that the statutory exemption of conscientious objectors from military service does not violate the Establishment Clause[3] or the Free Exercise Clause,[4] and that conscientious objector status is not required by the First Amendment.[5] Further, conscientious objectors may be constitutionally required to perform compulsory civilian duties in lieu of military service.[6]

Footnotes

1 U.S.—U.S. v. Bertram, 477 F.2d 1329 (10th Cir. 1973).

2 U.S.—U.S. v. Reiss, 478 F.2d 338 (2d Cir. 1973); U.S. v. Baechler, 509 F.2d 13 (4th Cir. 1974); U.S. v. Koehn, 457 F.2d 1332 (10th Cir. 1972).

Ministers and theological students

U.S.—Kochlacs v. Local Bd. No. 92, 476 F.2d 557 (7th Cir. 1973).

Religious opposition

U.S.—U.S. v. Bertram, 477 F.2d 1329 (10th Cir. 1973).

3 U.S.—Gillette v. U.S., 401 U.S. 437, 91 S. Ct. 828, 28 L. Ed. 2d 168 (1971); U.S. v. Wilson, 440 F.2d 382 (8th Cir. 1971).

4 U.S.—Gillette v. U.S., 401 U.S. 437, 91 S. Ct. 828, 28 L. Ed. 2d 168 (1971); U.S. v. Milliken, 416 F.2d 676 (9th Cir. 1969); Font v. Laird, 318 F. Supp. 891 (D. Md. 1970).

5 U.S.—Nurnberg v. Froehlke, 489 F.2d 843 (2d Cir. 1973); U.S. v. Koehn, 457 F.2d 1332 (10th Cir. 1972); U.S. v. Crocker, 308 F. Supp. 998 (D. Minn. 1970), judgment aff'd, 435 F.2d 601 (8th Cir. 1971).

6 U.S.—U.S. v. Wilson, 440 F.2d 382 (8th Cir. 1971); U.S. v. Anderson, 467 F.2d 210 (9th Cir. 1972); U.S. v. Henry, 344 F. Supp. 1 (E.D. La. 1972).

Assignment to religious institution

U.S.—U.S. v. Berrier, 434 F.2d 572 (4th Cir. 1970).

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16A C.J.S. Constitutional Law § 916

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Constitutional Law
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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

5. Other Particular Subjects

§ 916. Sunday closing and religious holiday observance laws

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1387, 1388

Statutes proscribing all labor, business, and other commercial activities on Sunday do not violate the First Amendment; however, Sunday legislation may violate the Establishment Clause if its purpose is to aid religion.

Statutes proscribing all labor, business, and other commercial activities on Sunday are not violative of either the Establishment Clause[1] or the Free Exercise Clause[2] of the First Amendment. However, Sunday legislation may violate the Establishment Clause if its purpose is to aid religion[3] although an attempt to demonstrate that Sunday closing laws were enacted for the purpose of aiding religion must fail where the laws have an avowed secular purpose.[4]

The validity under the First Amendment of a statutory exemption from the operation of Sunday laws of persons who observe a Sabbath on a day other than Sunday has been upheld.[5] Furthermore, requiring a state school activities association to accommodate, when scheduling a sports tournament, the religious obligations of students who observed a Saturday Sabbath does not violate the Establishment Clause.[6]

Religious holidays.

While there is authority that a state statute that declares a religiously significant day a public holiday does not violate the Establishment Clause,[7] it has also been held that a state statute designating a religious holiday as a legal school holiday or a state holiday violates the Establishment Clause.[8] The closing of a public office on a religious holiday which is not a state holiday, pursuant to statute, is a violation of the Establishment Clause,[9] and of a state constitutional guaranty of the free exercise of religion and a prohibition against discrimination or preference in favor of one religion.[10] A statutory ban on the sale of liquor on a religious holiday constitutes a violation of the Establishment Clause.[11]

Footnotes

1 U.S.—Two Guys From Harrison-Allentown, Inc. v. McGinley, 366 U.S. 582, 81 S. Ct. 1135, 6 L. Ed. 2d 551 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); McGowan v. State of Md., 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961).
Md.—Supermarkets General Corp. v. State, 286 Md. 611, 409 A.2d 250 (1979).
N.Y.—People v. Acme Markets, Inc., 37 N.Y.2d 326, 372 N.Y.S.2d 590, 334 N.E.2d 555 (1975).
Christmas season exception constitutional
N.C.—S. S. Kresge Co. v. Tomlinson, 275 N.C. 1, 165 S.E.2d 236 (1969).
Sale of certain commodities restricted
Minn.—State v. Target Stores, Inc., 279 Minn. 447, 156 N.W.2d 908 (1968).
Sales of liquor
U.S.—Epstein v. Maddox, 277 F. Supp. 613 (N.D. Ga. 1967), judgment aff'd, 401 F.2d 777 (5th Cir. 1968).
La.—Shreveport Independent Retail Grocers Ass'n v. City of Shreveport, 367 So. 2d 157 (La. Ct. App. 2d Cir. 1979).
A.L.R. Library
Validity, construction, and effect of "Sunday closing" or "blue" laws—modern status, 10 A.L.R.4th 246.

2 U.S.—Gallagher v. Crown Kosher Super Market of Mass., Inc., 366 U.S. 617, 81 S. Ct. 1122, 6 L. Ed. 2d 536 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961); Braunfeld v. Brown, 366 U.S. 599, 81 S. Ct. 1144, 6 L. Ed. 2d 563 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961).
Rule applicable to corporations
Md.—Atlantic Dept. Store, Inc. v. State's Attorney for Prince George's County, 22 Md. App. 381, 323 A.2d 617 (1974).

3 U.S.—McGowan v. State of Md., 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), for additional opinion, see, 366 U.S. 420, 81 S. Ct. 1153, 6 L. Ed. 2d 393 (1961).
N.Y.—People v. C. Klinck Packing Co., 214 N.Y. 121, 108 N.E. 278 (1915).
Okla.—Ex parte Ferguson, 62 Okla. Crim. 145, 70 P.2d 1094 (1937).
No religious basis
A state statute's ban on hunting on Sunday did not have a religious basis and thus did not violate the First Amendment.
U.S.—Hunters United for Sunday Hunting v. Pennsylvania Game Com'n, 28 F. Supp. 3d 340 (M.D. Pa. 2014).

4 U.S.—Discount Records, Inc. v. City of North Little Rock, 671 F.2d 1220 (8th Cir. 1982).

5 Ark.—Lockwood v. State, 249 Ark. 941, 462 S.W.2d 465 (1971).
N.H.—Opinion of the Justices, 108 N.H. 103, 229 A.2d 188 (1967).

6 Or.—Nakashima v. Board of Education, 204 Or. App. 535, 131 P.3d 749, 207 Ed. Law Rep. 770 (2006), opinion adhered to on reconsideration, 206 Or. App. 568, 138 P.3d 854, 210 Ed. Law Rep. 1268 (2006) and aff'd on other grounds, 344 Or. 497, 185 P.3d 429, 232 Ed. Law Rep. 944 (2008).

7 **Good Friday**

U.S.—Cammack v. Waihee, 932 F.2d 765 (9th Cir. 1991) (rejected on other grounds by, Colorado Taxpayers Union, Inc. v. Romer, 963 F.2d 1394 (10th Cir. 1992)).

8 **Good Friday**
U.S.—Metzl v. Leininger, 57 F.3d 618, 101 Ed. Law Rep. 112, 32 Fed. R. Serv. 3d 507 (7th Cir. 1995).

9 **Good Friday**
Cal.—Mandel v. Hodges, 54 Cal. App. 3d 596, 127 Cal. Rptr. 244, 90 A.L.R.3d 728 (1st Dist. 1976).

10 **Good Friday**
Cal.—Mandel v. Hodges, 54 Cal. App. 3d 596, 127 Cal. Rptr. 244, 90 A.L.R.3d 728 (1st Dist. 1976).

11 **Good Friday**
Conn.—Griswold Inn, Inc. v. State, 183 Conn. 552, 441 A.2d 16, 27 A.L.R.4th 1144 (1981).

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16A C.J.S. Constitutional Law § 917

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Constitutional Law
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PART IV. First Amendment Rights; Speech, Petition, Religion, and Association

X. Religious Liberty and Freedom of Conscience

B. Particular Subjects Affected

5. Other Particular Subjects

§ 917. Miscellaneous applications

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 1310, 1311, 1314 to 1318, 1375, 1383, 1391, 1392, 1396, 1399, 1405 to 1412, 1414 to 1420, 1428

Contentions under the religion clauses of the First Amendment have been asserted and adjudicated with respect to various particular subjects.

The courts have discussed the guaranty of religious liberty and freedom of conscience, as where contentions based on asserted violations of the religion clauses of the First Amendment and similar aspects of state constitutions have been raised, affecting such diverse matters as athletic events,[1] autopsies,[2] bigamy,[3] blasphemy,[4] and broadcasting.[5] Other particular subjects which have been subjected to such judicial analysis include church operated day care centers,[6] "deprogramming" of cult members,[7] desecration of churches,[8] disruption of worship,[9] disability benefits,[10] drug sales in the vicinity of churches,[11] and fortune telling.[12]

In addition, the courts have considered such issue in connection with Indian sacred sites[13] or religious practices,[14] Inupiat people,[15] liquor sales[16] in the vicinity of churches,[17] and mail fraud.[18] There have been adjudications concerning migrant labor

camps,[19] military bases[20] and military grooming and dress regulations,[21] motor vehicle regulations,[22] obscene mailings,[23] police grooming regulations,[24] profane telephone calls,[25] procurement of services from a religious organization by a state,[26] prostitution,[27] and public nudity.[28]

There have been adjudications involving other subjects in connection with constitutional guaranties of religious liberty, such as religious discrimination,[29] postage stamps,[30] saluting the flag,[31] securities regulation,[32] sodomy statutes,[33] distribution of sweepstakes revenues,[34] testamentary dispositions,[35] trademarks,[36] unfair competition,[37] Social Security and public welfare,[38] the use of public places,[39] and veterans' benefits for conscientious objectors who performed alternative civilian service.[40]

CUMULATIVE SUPPLEMENT

Cases:

The First Amendment protects the right to pray. U.S.C.A. Const.Amend. 1. Sause v. Bauer, 138 S. Ct. 2561 (2018).

Speech by vendors participating in Empire State Plaza Summer Outdoor Lunch Program as sponsored by New York State Office of General Services (OGS), which was event involving both government and private individuals, was not properly characterized as government speech, and therefore OGS violated First Amendment by preventing physical access to Plaza through its denial of application to participate by vendor that branded its truck and products with ethnic slurs; even if OGS had history of screening applications for various permits to use Empire State Plaza, names of vendors in Lunch Program were not closely identified with government in mind of public, venders visibly were merely temporary feature of landscape, and incidental assistance that OGS provided to Lunch Program vendors would not lead reasonable observer think that OGS adopted vendor's branding. U.S. Const. Amend. 1. Wandering Dago, Inc. v. Destito, 879 F.3d 20 (2d Cir. 2018).

[END OF SUPPLEMENT]

Footnotes

1 **Wearing of skullcap in boxing match**
N.Y.—Harris v. New York State Athletic Commission, 56 A.D.2d 835, 392 N.Y.S.2d 70 (2d Dep't 1977).

2 Md.—Snyder v. Holy Cross Hospital, 30 Md. App. 317, 352 A.2d 334 (1976).

3 N.Y.—People v. Wood, 93 Misc. 2d 25, 402 N.Y.S.2d 726 (J. Ct. 1978).

4 Md.—State v. West, 9 Md. App. 270, 263 A.2d 602, 41 A.L.R.3d 512 (1970).
Pa.—Com. ex rel. Brown v. Rundle, 424 Pa. 505, 227 A.2d 895 (1967).

5 U.S.—McIntire v. Wm. Penn Broadcasting Co. of Philadelphia, 151 F.2d 597 (C.C.A. 3d Cir. 1945).
U.S.—Anti-Defamation League of B'Nai B'rith, Pacific Southwest Regional Office v. F.C.C., 403 F.2d 169 (D.C. Cir. 1968).

6 **Licensing requirements**
Kan.—State ex rel. O'Sullivan v. Heart Ministries, Inc., 227 Kan. 244, 607 P.2d 1102 (1980).
Tex.—Oxford v. Hill, 558 S.W.2d 557 (Tex. Civ. App. Austin 1977), writ refused, (Mar. 15, 1978).

7 Cal.—Katz v. Superior Court, 73 Cal. App. 3d 952, 141 Cal. Rptr. 234 (1st Dist. 1977).

8 N.M.—State v. Vogenthaler, 89 N.M. 150, 1976-NMCA-030, 548 P.2d 112, 90 A.L.R.3d 1119 (Ct. App. 1976).

9 Ala.—Hill v. State, 381 So. 2d 206 (Ala. Crim. App. 1979), writ denied, 381 So. 2d 213 (Ala. 1980).

10 U.S.—Lewis v. Califano, 616 F.2d 73 (3d Cir. 1980).
Kan.—Powers v. State Dept. of Social Welfare, 208 Kan. 605, 493 P.2d 590 (1972).

11 Ill.—People v. Falbe, 189 Ill. 2d 635, 244 Ill. Dec. 901, 727 N.E.2d 200 (2000).

12 Cal.—In re Bartha, 63 Cal. App. 3d 584, 134 Cal. Rptr. 39, 91 A.L.R.3d 759 (2d Dist. 1976).

13 U.S.—Lyng v. Northwest Indian Cemetery Protective Ass'n, 485 U.S. 439, 108 S. Ct. 1319, 99 L. Ed. 2d 534 (1988); Sequoyah v. Tennessee Valley Authority, 620 F.2d 1159 (6th Cir. 1980); Badoni v. Higginson, 638 F.2d 172 (10th Cir. 1980).

14 Alaska—Frank v. State, 604 P.2d 1068 (Alaska 1979).

15 **Rights to offshore sea area**

U.S.—Inupiat Community of Arctic Slope v. U.S., 548 F. Supp. 182 (D. Alaska 1982), decision aff'd, 746 F.2d 570 (9th Cir. 1984).

16 **Minimum age**

U.S.—Felix v. Milliken, 463 F. Supp. 1360 (E.D. Mich. 1978).

Sale of liquor on Sunday or religious holiday, see § 916.

17 Ala.—Davis v. Town of Wilmer, 376 So. 2d 698 (Ala. 1979).

Fla.—Horne v. Hernando County, 297 So. 2d 606 (Fla. 2d DCA 1974).

18 U.S.—U.S. v. Rasheed, 663 F.2d 843, 9 Fed. R. Evid. Serv. 360, 62 A.L.R. Fed. 284 (9th Cir. 1981).

19 U.S.—Petersen v. Talisman Sugar Corp., 478 F.2d 73 (5th Cir. 1973); Velez v. Amenta, 370 F. Supp. 1250 (D. Conn. 1974); Franceschina v. Morgan, 346 F. Supp. 833 (S.D. Ind. 1972).

20 U.S.—U.S. v. Mowat, 582 F.2d 1194 (9th Cir. 1978).

21 **Chaplain's beard**

U.S.—Geller v. Secretary of Defense, 423 F. Supp. 16 (D.D.C. 1976).

Yarmulke

U.S.—Goldman v. Weinberger, 475 U.S. 503, 106 S. Ct. 1310, 89 L. Ed. 2d 478 (1986).

Turban

U.S.—Sherwood v. Brown, 619 F.2d 47 (9th Cir. 1980).

22 **License photographs**

Colo.—Johnson v. Motor Vehicle Division, Dept. of Revenue, 197 Colo. 455, 593 P.2d 1363 (1979).

Ind.—Bureau of Motor Vehicles v. Pentecostal House of Prayer, Inc., 269 Ind. 361, 380 N.E.2d 1225 (1978).

23 U.S.—Knowles v. U.S., 170 F. 409 (C.C.A. 8th Cir. 1909).

24 **Beards**

U.S.—Marshall v. District of Columbia Government, 559 F.2d 726 (D.C. Cir. 1977).

La.—Cupit v. Baton Rouge Police Dept., 277 So. 2d 454 (La. Ct. App. 1st Cir. 1973), writ refused, 281 So. 2d 745 (La. 1973).

25 Ariz.—Baker v. State, 16 Ariz. App. 463, 494 P.2d 68 (Div. 2 1972).

26 Ariz.—Community Council v. Jordan, 102 Ariz. 448, 432 P.2d 460 (1967).

Colo.—In re Marriage of Schulke, 40 Colo. App. 473, 579 P.2d 90 (App. 1978).

Wis.—State ex rel. Warren v. Nusbaum, 64 Wis. 2d 314, 219 N.W.2d 577 (1974).

27 Ind.—Sumpter v. State, 261 Ind. 471, 306 N.E.2d 95 (1974).

28 Cal.—Eckl v. Davis, 51 Cal. App. 3d 831, 124 Cal. Rptr. 685 (2d Dist. 1975).

29 **Public housing**

U.S.—Otero v. New York City Housing Authority, 344 F. Supp. 737 (S.D. N.Y. 1972).

N.J.—Cervase v. Kawaida Towers, Inc., 124 N.J. Super. 547, 308 A.2d 47 (Ch. Div. 1973), judgment aff'd, 129 N.J. Super. 124, 322 A.2d 477 (App. Div. 1974).

30 U.S.—Protestants and Other Americans United for Separation of Church and State v. O'Brien, 272 F. Supp. 712 (D. D.C. 1967).

31 U.S.—Taylor v. State of Mississippi, 319 U.S. 583, 63 S. Ct. 1200, 87 L. Ed. 1600 (1943).

Ariz.—State v. Davis, 58 Ariz. 444, 120 P.2d 808 (1942).

32 U.S.—Securities and Exchange Commission v. World Radio Mission, Inc., 544 F.2d 535 (1st Cir. 1976).

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34 N.H.—Opinion of the Justices, 108 N.H. 268, 233 A.2d 832 (1967).

35 Mass.—Gordon v. Gordon, 332 Mass. 197, 124 N.E.2d 228 (1955).

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37 U.S.—Purcell v. Summers, 145 F.2d 979 (C.C.A. 4th Cir. 1944).
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38 U.S.—Guterman v. Schweiker, 520 F. Supp. 91 (E.D. Mich. 1981).
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39 **Denial of use for religious services**
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40 U.S.—Johnson v. Robison, 415 U.S. 361, 94 S. Ct. 1160, 39 L. Ed. 2d 389 (1974); Reynolds v. Dukakis, 441 F. Supp. 646 (D. Mass. 1977).
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